

# ARE GOVERNMENT PURCHASING POLICIES FAILING SMALL BUSINESS?

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## ROUNDTABLE

BEFORE THE

## COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JUNE 19, 2002  
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ONE HUNDRED SEVENTH CONGRESS

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# C O N T E N T S

## OPENING STATEMENTS

	Page
Kerry, The Honorable John F., Chairman, Committee on Small Business and Entrepreneurship, and a United States Senator from Massachusetts .....	1
Carnahan, The Honorable Jean, a United States Senator from Missouri .....	21
Bond, The Honorable Christopher S., Ranking Member, Committee on Small Business and Entrepreneurship, and a United States Senator from Missouri .....	09

## WITNESS TESTIMONY

App, Steven, deputy chief financial officer, Department of the Treasury, Washington, D.C. ....	*
Armendariz, Fred, associate deputy administrator, Office of Government Contracting and Business Development, U.S. Small Business Administration, Washington, D.C. ....	*
Allen, Susan, president and CEO, US Pan Asian American Chamber of Commerce, Washington, D.C. ....	*
Clark, Major, assistant advocate for procurement, U.S. Small Business Administration, Office of Advocacy, Washington, D.C. ....	*
Denlinger, Stephen, president and CEO, Latin American Management Association, Washington, D.C. ....	*
Henry, Major General Charles, U.S.A. (Ret.), president and CEO, National Veterans Business Development Corporation, Alexandria, VA .....	*
Hudson, Morris, program director, Missouri Procurement Technical Assistance Centers, Columbia, MO .....	*
Kasoff, Barbara, vice president, Women Impacting Public Policy, Oklahoma City, OK .....	*
Mazza, Pamela, senior partner, Piliero, Mazza & Pargament, Washington, D.C. ....	*
Newlan, Ron, chairman, HubZone Contractors National Council, Alexandria, VA .....	*
Parker, Patricia, president and CEO, Native American Management Services, Inc., McLean, VA .....	*
Payne, Joann, president, Women First National Legislative Committee, Washington, D.C. ....	*
Robinson, Michael, program manager, Massachusetts Small Business Development Centers, University of Massachusetts, Amherst, MA .....	*
Rodriguez, Ramon, chief operating officer, U.S. Hispanic Chamber of Commerce, Washington, D.C. ....	*
Styles, The Honorable Angela B., administrator for Federal procurement policy, Office of Management and Budget, Washington, D.C. ....	*
Thomas, Ralph III, associate administrator for OSDDBU, National Aeronautics and Space Administration, Washington, D.C. ....	*
Turner, John, Minority Business Enterprise Legal Defense and Education Fund, Washington, D.C. ....	*
Turpin, James, director, Government and Industry Relations, American Subcontractors Association, Inc., Alexandria, VA .....	*
Wilfong, Henry, president, National Association of Small Disadvantaged Businesses, Silver Spring, MD .....	*

# IV

	Page
PREPARED TESTIMONY AND APPENDIX MATERIAL SUBMITTED	
Kerry, The Honorable John F.	
Opening statement .....	1
Prepared statement .....	44
Letters for the Record .....	87
S. 1994 analysis and text .....	62
S. 2466 analysis and text .....	68
Analysis and Discussion draft of the "Small and Disadvantaged Business Ombudsman Act" .....	77
Armendariz, Fred	
Prepared Testimony .....	96
Report of Annual Procurement Preference Goaling Achievements .....	98
Black, Ed, president and CEO, Computer & Communications Industry Association, Washington, D.C., letter and comments for the record .....	99
Bollinger, John, deputy executive director, Paralyzed Veterans of America, Washington, D.C., comments for the record .....	104
Denlinger, Stephen	
Prepared Testimony .....	111
Henry, Major General Charles	
Prepared Testimony .....	112
Hudson, Morris	
Prepared Testimony .....	116
Kasoff, Barbara	
Prepared Testimony .....	123
Newlan, Ronald	
Prepared Testimony .....	128
Payne, Joann	
Prepared Testimony .....	131
Turpin, James	
Prepared Testimony .....	141
Wilfong, Henry	
Prepared Testimony .....	155
Wilson, Don, president, Association of Small Business Development Centers, Birke, VA, letter .....	159

\* Comments, if any, are located between pages 6 and 41.

## **ROUNDTABLE: “ARE GOVERNMENT PUR- CHASING POLICIES FAILING SMALL BUSI- NESS?”**

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**WEDNESDAY, JUNE 19, 2002**

UNITED STATES SENATE,  
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 9:11 a.m., in room 428–A, Russell Senate Office Building, The Honorable John F. Kerry, (Chairman of the Committee) presiding.

Present: Senators Kerry, Carnahan, and Bond.

### **OPENING STATEMENT OF THE HONORABLE JOHN F. KERRY, CHAIRMAN, SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP, AND A UNITED STATES SENATOR FROM MASSACHUSETTS**

Chairman KERRY. This is the most orderly group I have ever had to gavel to order.

[Laughter.]

Chairman KERRY. Thank you all. Good morning, everybody.

[Chorus of good mornings.]

Chairman KERRY. Great. We are awake. I love it.

Thank you very much. I really appreciate everybody taking time to come in, and thank you so much for participating in another roundtable and what we consider to be a very important one, and I thank you for taking part in this.

We are, as you all know, here today to examine, in our roundtable format, which we have found extraordinarily effective, the question of whether or not Government purchasing policies are hurting small businesses. I wish the title were different. I wish we were here to examine how well we are doing and how much progress we have made, but sadly there is just a disconnect. We are talking a lot these days about the culture of the FBI and the CIA. Regrettably, there is a poor culture in Government surrounding procurement. There is a culture problem, to a large degree, an awareness problem, a caring problem, and I think, to some measure, my own personal opinion is it is an expediency problem. I think people sort of have this sense, well, I do not want to spend time dealing with a lot of small businesses or I do not think they will do it as well for us. Let us just get one big package, and get this off our plate. I mean, there is a mentality about it.

We need to think through how we are going to deal with this. We cannot have the Federal Government spending billions, hun-

dreds of billions of dollars, and not try to proactively reach out and share the pie. I mean, you just cannot do that, and there are so many goals contained in what we are trying to do, as we do this, in terms of growing small businesses, diversifying, allowing people to enter the business world who might not otherwise have easy access, particularly women-owned businesses.

So I think this is imperative, and I think we have to acknowledge here today, I think, that one of the foundation premises of this discussion is that the procurement reform, as it was so-called of the early 1990s, simply has not adequately protected small business. There are actions such as contract bundling, increased use of GSA supply schedule cutbacks in the procurement personnel, as well as limitations on certain procurement programs in response to the Adarand decision, all of which have had a devastating impact, and I underscore that, a devastating impact on small business and their ability to do business with the Federal Government. I am sorry about that.

We have some folks here particularly to sort of try to explain some of this from the administrative point of view, but we really need a major change in how we are thinking about this, and we have got to figure out how we are going to do that. Until the Federal Government, at all levels, realizes the importance of doing business with small business, I am afraid that these negative trends are going to continue, and we will not have the access that we seek on a national basis for a wide range of small business suppliers across the country, and they will continue to lose billions of dollars in opportunities year after year.

In your packets that have been handed out by our staff, there are a series of charts which detail the Federal Government achievement on small business or lack of achievement on small business prime contracting goals, and you will see that the news is not encouraging. Most striking is the failure, for the second year in a row, to meet the main small business prime contracting goal of 23 percent. It should not be that hard.

[The chart follows:]

**Governmentwide Small Business Procurement Goals**  
**Prime Contracts**

FY 1997 Total Procurement Dollars: 171.4 Billion			
	Goal	Actual	Loss for small business
All Small Business	20.00%	24.80%	
All SDB	5.00%	7.00%	
8(a) BD	N/G	1.70%	
<b>Women-Owned</b>	<b>5.00%</b>	<b>2.10%</b>	<b>\$5.0 billion</b>
Disabled Veteran-Owned	N/R	N/R	
HUBZone	N/R	N/R	

FY 1998 Total Procurement Dollars: 181.7 Billion			
	Goal	Actual	Loss for small business
All Small Business	23.00%	23.40%	
All SDB	5.00%	6.50%	
8(a)	N/G	3.60%	
<b>Women-Owned</b>	<b>5.00%</b>	<b>2.20%</b>	<b>\$5.1 billion</b>
Disabled Veteran-Owned	N/R	N/R	
HUBZone	N/R	N/R	

FY 1999 Total Procurement Dollars: 185.7 Billion			
	Goal	Actual	Loss for small business
All Small Business	23.00%	23.10%	
All SDB	5.00%	6.70%	
8(a) BD	N/G	3.40%	
<b>Women-Owned</b>	<b>5.00%</b>	<b>2.50%</b>	<b>\$4.6 billion</b>
Disabled Veteran-Owned	N/R	N/R	
<b>HUBZone</b>	<b>1.00%</b>	<b>N/A</b>	<b>\$1.9 billion</b>

FY 2000 Total Procurement Dollars: 200.9 Billion			
	Goal	Actual	Loss for small business
<b>All Small Business</b>	<b>23.00%</b>	<b>22.26%</b>	<b>\$1.5 billion</b>
All SDB	5.00%	6.49%	
8(a) BD	N/G	2.88%	
<b>Women-Owned</b>	<b>5.00%</b>	<b>2.28%</b>	<b>\$5.5 billion</b>
<b>Disabled Veteran-Owned</b>	<b>3.00%</b>	<b>N/A</b>	<b>\$6.0 billion</b>
<b>HUBZone</b>	<b>1.50%</b>	<b>0.33%</b>	<b>\$2.4 billion</b>

FY 2001 Total Procurement Dollars: 219.6 Billion			
	Goal	Actual	Loss for small business
<b>All Small Business</b>	<b>23.00%</b>	<b>22.81%</b>	<b>\$417 million</b>
All SDB	5.00%	7.12%	
8(a) BD	N/G	2.86%	
<b>Women-Owned</b>	<b>5.00%</b>	<b>2.49%</b>	<b>\$5.5 billion</b>
<b>Disabled Veteran-Owned</b>	<b>3.00%</b>	<b>0.25%</b>	<b>\$6.0 billion</b>
<b>HUBZone</b>	<b>2.00%</b>	<b>0.72%</b>	<b>\$2.8 billion</b>

N/G = no statutory goal  
N/R = not yet required by law  
N/A = no data available

SDB = Small Disadvantaged Business  
BD = Business Development  
HUBZone = Historically Underutilized Business Zone

Chairman KERRY. Equally troubling, I mean, if you have the intent to do it, if you are determined to do it, you can meet the goal, and if you have some kind of enforcement mechanism, and if you care about it. If you do not care about it and you just kind of let it slide into the backwaters of your efforts, then you are where we are. It is a lack of leadership, a lack of effort and a lack of caring, and we have got to underscore this.

You also see in the charts the near failure of the HUBZone and Disabled Veteran-Owned Small Business Procurement programs, with respect to goal attainment, as well as the lack of any real increase in women-owned small business participation in Government procurement.

We were bragging a few years ago about the incredible increase of women in small business, and here we are seeing just sort of a casual disregard for the capacity to continue that, and I think it is shameful. I would also point out that the Administration's delay in implementing the provisions of the fiscal year 2000 Small Business Reauthorization Act, creating the Women's Procurement Program, has also played a key role in keeping women-owned small businesses out of the Federal marketplace last year. I hope some of you will talk about that today.

So we have a diverse group of people here with extensive knowledge of Government Small Business Procurement programs. I am grateful Angela Styles is going to be joining us from the Office of Federal Procurement Policy, and we have SBA Associate Deputy Administrator for Government Contracting, Fred Armendariz, and from the program side we have a number of representatives of Small Business's procurement offices at several Federal agencies, including the Procurement Technical Assistance Center representatives. We also have a number of advocates and business owners who work with participants in these procurement programs.

Now it is my hope that today's discussion will be both thorough and constructive. We are not here to, I mean, you have got to state the problem, and I am trying to be honest in stating the problem, but I take no pleasure out of sort of a berating session. I mean, it just does not get us anywhere, and that is not what this is about. This is an effort to sort of figure out how do we turn this corner, how do we set where we ought to be.

It is my hope that this discussion is going to accomplish that, and we look forward to receiving your input on some of the legislation that is in front of the Committee at this point in time, especially the draft of the Small and Disadvantaged Business Ombudsman Act.

[The legislation and analyses are located in the appendix on p. 77].

Chairman KERRY. I understand that no one piece of legislation is going to cure all of small business's problems. It never could. But on the other hand, it gives you the tools to be able to advance the process, and I think that the creation of the SDB ombudsman at the SBA will put us on a better track, in terms of isolating and focusing on the procurement issues and providing a mechanism for people to be able to come to somebody without fear of retribution.

One of the reasons that we have not really had an ability for companies to sort of fight for themselves is that the minute they



do, they are blackballed. So you raise your voice and say, "Hey, wait a minute, what is happening here?" And you think that next contract down the road is gone forever because you were the skunk at the garden party. We all know how it works, and we have got to provide some kind of capacity for people to be able to advocate here.

This ombudsman I think has the ability to do that, to track complaints, to do it on a confidential basis and to try to help make the process work. Of critical importance in this is the first statutory consequence of an agency failing to meet its goals. We have to have some consequence. You cannot just slide by and have nothing happen. So our hope is that any agency that fails to meet their goal will be required to submit a report, and there will be a visible sort of airing of their having missed the goal and of what they are going to do to remedy it. They have to specifically submit that plan to remedy and detail why they failed to meet their business goal so that we can address those concerns.

The ombudsman will also be responsible for tracking compliance with Section K of the Small Business Act, which stipulates that the Director of the Office of Small and Disadvantaged Business Utilization at each Federal agency will report to the head or deputy head of that agency.

Late last year, with the support of Senator Bond, the Ranking Member, I sent a letter to 21 Federal agencies to gauge compliance with this provision, and using a very lenient standard of compliance, we have concluded that at least nine of the Federal agencies we surveyed are in violation of Section K of the Small Business Act. That is simply unacceptable. So later this week, I will be forwarding those survey results to the GAO so that it can perform a more detailed investigation.

[The letter can be found on page 87.]

Chairman KERRY. One final note on the legislation is the conclusion of a provision to increase the Governmental Small Business Prime Contracting Procurement Goal from 23 percent to 30 percent. When I first made the suggestion that the Small Business Procurement Goal should be increased 7 percentage points, my office received a number of calls, both in support and in opposition, but, by and large, those in opposition pointed to the fact that the Federal Government has never achieved such a level of business procurement participation, and while that is true, no one said it was impossible. So it is simply a question of what is our goal?

Ninety-nine percent of the businesses in America are small business. Fifty-two percent of American workers work in what is defined as a small business. Are we to believe that when the Federal Government is spending money, we do not have the ability to achieve the goal of 30-percent businesses having access to that kind of procurement? What that does is provide enormous strength to the small business community, and I think it is a mark of the Federal Government's confidence and belief in the ability of these businesses to meet the standards and do the job.

Obviously, we all know here, if they cannot do it, if there is a lack of availability, there is all the capacity in the procurement process to take note of that. Nobody is required to buy something from somebody who does not have it. Nobody is required to buy

something that does not meet the standards. Nobody is required to buy something that does not do the job or that puts people at risk or that does anything contrary to good procurement policy. That is not the purpose of this.

There is no diminution of standards or quality in what we are seeking to do. It is simply saying that all things being equal, we want the small business community to be able to share, and we ought to be able to do that.

I think that that is probably the outline, as much as I would like to go into it at this point in time. We will discuss two other important pieces of legislation: S. 1994, the Combined 8(a) and HUBZone Priority Preference Act, and S. 2466, the Small Business Federal Contractor Safeguard Act. I think everybody understands what those bills do and what we are trying to do with them.

Chairman KERRY. So, without further ado, Senator Bond is 5 minutes away.

Let me just run through sort of how we are going to work this. How many of you have taken part in one of the roundtables before? Several of you—OK, so you are pretty experienced and versed in this.

For those of you who have not—let me just ask you, when you intervene, as we invite you to do, in my absence or Senator Bond's absence, our staffs will run the show, and they have done so with great ability in the past events, and we have a full record which is then made part of the record of the Committee.

But, please, just state your name clearly. This is an official proceeding. There is a court reporter who is taking down everybody's statements, et cetera, to be part of that record. If you want to speak, just flip your card up on its side, and then they will take note of you as we go along here.

Again, if we can try to contain the comments so there is a good dialogue and not long speeches, I think that is very helpful in terms of making this more rewarding and more of a dialogue, rather than sort of a long series of soliloquies.

John DaSilva, of my staff, and Cordell Smith, of Senator Bond's staff, will act as the facilitators. So why do we not just run around very quickly. Everybody just introduce themselves, say who you are, and then we will sort of open up.

Mr. SMITH. Hi, I am Cordell Smith. I am with Senator Bond's staff.

Mr. APP. Steve App, Deputy Chief Financial Officer at Treasury.

Mr. ARMENDARIZ. Fred Armendariz, Associate Deputy Administrator from the U.S. Small Business Administration.

Ms. ALLEN. Susan Allen, president and CEO of the U.S. Pan Asian American Chamber of Commerce, hoping to represent the one million Asian-owned businesses in the country.

Mr. CLARK. Good morning. Major Clark, Office of Advocacy, U.S. Small Business Administration.

Mr. DENLINGER. Steve Denlinger, president of LAMA, Latin American Management Association.

General HENRY. Chuck Henry, president and CEO of the National Veterans Business Development Corporation, representing, hopefully, 2.4 million veteran owners.

Mr. HUDSON. Morris Hudson, program director, Missouri Procurement Technical Assistance Center, also president-elect of the Association of Government Marketing Assistance Specialists.

Ms. KASOFF. Barbara Kasoff, co-founder and vice president of Women Impacting Public Policy.

Ms. MAZZA. I am Pam Mazza, with the law firm of Piliero, Mazza & Pargament. I am a Government contracts attorney, and our firm represents small businesses in the 8(a) program, the HUBZone program, women-owned businesses, graduates, and other small businesses.

Mr. NEWLAN. Ron Newlan, chairman of the HUBZone Contractors National Council, representing all HUBZone firms nationwide.

Ms. PARKER. Patricia Parker. I am president and CEO of Native American Management Services, and I am also here representing the National Indian Business Association and a founding partner of Women Impacting Public Policy.

Ms. PAYNE. I am Joann Payne. I am president of Women First National Legislative Committee, and I represent those women certified in the Disadvantaged Business Enterprise program, administered by the Department of Transportation, and I might add the most successful program we have.

Mr. ROBINSON. Hi. I am Michael Robinson, program manager at the Massachusetts Procurement Technical Assistance Center.

Mr. RODRIGUEZ. Good morning, Senator. Ramon Rodriguez. I am the chief operating officer of the U.S. Hispanic Chamber of Commerce, representing approximately 1.8 million Hispanic-owned businesses in the country.

Mr. THOMAS. I am Ralph Thomas. I am assistant administrator for Small and Disadvantaged Business Utilization at NASA, and I am also the chairman of the Federal Small Business Directors Interagency Council.

Mr. TURNER. Good morning, Senator. My name is John Turner, Jr. I am director of Special Projects for the Minority Business Enterprise Legal Defense and Education Fund, an organization founded in 1980 by former Maryland Congressman Parren Mitchell. I am representing Anthony Robinson, our president, who had pressing family business today.

Both Anthony Robinson and former Congressman Parren Mitchell asked me, as a preliminary matter, to commend your interest, concern and support for the minority business community. We have seen firsthand the work you have done in Massachusetts, and especially in Boston.

Mr. TURPIN. Good morning, Senator. My name is James Turpin, and I represent the American Subcontractors Association, a trade association representing subcontractors and specialty trade contractors in the construction industry.

Mr. WILFONG. Good morning, Senator. My name is Hank Wilfong, president of the National Association of Small Disadvantaged Businesses. We are about 300-strong around the country, dealing primarily with the aerospace defense industry. One of the things I wanted to do was to compliment you on the Ombudsman bill. I think it is awesome. I have reviewed it and re-reviewed it, and I think it is awesome and will help do a lot of the things that need to be done.

Also, I want to personally thank you for your putting that letter, the SDB set-aside letter that you wrote to SBA. I am sorry it did not come out exactly like we would have liked to have done, but I appreciate your having done it, and I wish we could send it again.

Ms. FORBES. I am Patty Forbes. I am the Chairman's staff director on this Committee.

Mr. DASILVA. I am John DaSilva. I work for Senator Kerry on the Committee, handling procurement issues.

Chairman KERRY. Well, thank you all very, very much.

Those of you who commended me will be placed high on a special list here.

[Laughter.]

Chairman KERRY. Thank you very much. Thanks for the comments.

So why do we not start off. I know Senator Bond is on his way. We are going to interrupt when he comes, and I have a 9:30 that I am supposed to be at, but I will stay until he gets here.

Who would like to lead off? Do you have a specific—

Ms. ALLEN. I would.

Chairman KERRY. Before you do, let me try to—and we will come back to you, Susan, in 1 second.

Is there something inherent—let me just sort of put this question on the table, if I can, as a beginning point—is there something inherent in the procurement process itself that is a stumbling block to the ability to be able to do better or, I mean, what would each of you say is the principal reason, if there is one principal reason that leaps out at you, for why we are not meeting this goal or not able to. Can we start there?

Ms. ALLEN. I think it is lack of transparency, the complication of the process. Nowadays, when the small businesses, particularly our constituents, and we hear a lot from them, they were told, if you want to participate in the Federal contracting process, go to our website, and they hire a full-time staff, they hire another full-time staff, they just do not have enough money to hire the staff to go search on the website, and that is one major obstacle.

Small businesses, and this is the point I wanted to make when I volunteered to start to lead this off, have been extolled for nearly 20 years as the backbone of the American economy. We created more jobs than all Fortune 500 companies combined. We are the risk-takers, we are the innovators, and yet now with the contract bundling practice, it is hurting them. It is bundling them out of the table, and I just want to bring a new perspective because I am sure later I will be hearing, Senator Kerry, a lot about the other issues that have affected why small businesses are having less and less portion of the contracting businesses.

Remember, in the 1980s, how we used to hear Japan is the country who could say, "no"? One very arrogant Japanese politician in Japan wrote a book and said, "Japan is the country that could say no."

Well, Japan has been run by a handful of major corporations, mega corporations, and that is what we call Japan, Inc. Look at Japan today, these keiretsus, which is analogous to our bundled corporations, have brought Japan's economy to its knees, and we do not want to be the keiretsu of Japan. I think the lack of trans-

parency, the lack of accountability, the lack of innovation in major corporations who no longer do as much R&D as they used to, they wait for their small businesses to take the risk, and invent the processes and products, and then the major corporations come in like Pac-Man, they eat them up, and with the Federal procurement process it is so complicated, it is like a maze. If we can simplify the process, do not just go to the small business and tell them go surf our website, that will be a major step.

Chairman KERRY. So three things. You need a contact person that helps make it happen; you need transparency—

Ms. ALLEN. Accountability.

Chairman KERRY. And accountability.

Ms. ALLEN. It is not just the major contractors, but make the subcontractors come up with the report, and some have even suggested—OMB held a public hearing last Friday and suggested that their future contracts be tied to their performance. Of course, as you said, we should award contracts according to merit and not for the sake of goals.

Chairman KERRY. Good comments.

Before we go further, and, General, we will come back to you, I said we would interrupt when Senator Bond got here. He is now here, and I would like to turn the floor over to Senator Bond for his opening comments.

**OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, A UNITED STATES SENATOR FROM MISSOURI**

Senator BOND. Mr. Chairman, thank you. I apologize. This is one of those days. This is the “Perfect Storm,” when I had a couple of items this morning and a hearing in the Health, Education, Labor and Pensions Committee going on all at once, but I commend you for taking the lead in this, Mr. Chairman, and I welcome our procurement roundtable. Because, as I think everybody knows now, this Committee has had a long-standing interest in ensuring that small business has the “maximum practicable opportunity to participate,” in the words of the Small Business Act, in government contracting, and certainly Susan has just given a very good reason why this small business participation is so important.

First, I want to recognize my Missouri constituent, Morris Hudson, who has joined us today. He heads the Procurement Technical Assistance Center at the University of Missouri and is the president-elect of the national professional association for PTAC staff, the Association of Government Marketing Assistance Specialists.

I want to say a special word of greeting, also, to Angela Styles, the Administrator of the Office of Federal Procurement Policy for President Bush. In March, the President personally stated his commitment to tackle the problem contract bundling, and Angela has been the point person in trying to convert that commitment into specific policy steps. Unfortunately, around here, when you are the point person, you are also the point target.

[Laughter.]

Senator BOND. There have been some anonymous sources making anonymous comments about her actions in the area, and one anonymous critic was dismayed that Angela bought into the “myth” that bundling has hurt small business, suggesting Angela was pur-

suings this issue out of personal motives, rather than as an Administration initiative.

Well, I have heard the President, in his own words, say from his own heart, that this is a problem. So, Angela, you must be doing something right. I have the analogy we used to use back home. If you throw a rock into a pack of dogs, you know the one that has been hit because that is the one that barks, and if they howl, you know that you must be doing something right.

But we are looking forward to a good discussion today about bundling. We need to know the state of play on the Administration's initiative, as well as the reaction to the bill that Chairman Kerry and I have introduced. We came close in last year's defense authorization on agreement to tighten the current law, but our bill is going to build on that language.

I also want to welcome Ron Newlan of the HUBZone Contractors National Council. Ron has some concerns about the bill that Chairman Kerry and I introduced to provide a super-preference for firms that are both HUBZone and 8(a) program participants. I share the view that a 20-percent price evaluation preference, 10 percent for each program added together, is probably too high.

Ron also has some concerns about some of the bill language from set-asides. For example, the bill says when bills are being sought just from HUBZone firms, a HUBZone set-aside, and a HUBZone firm that is also 8(a) is bidding, that firm should get the preference when it submits a bid comparable to one from a non-8(a) HUBZone firm, but "comparable" is the rub.

So we need to hear these kinds of criticisms and suggestions. That is what we are here to do in this roundtable, to learn how we can make legislation better, how we can deal with the problems we find.

We have draft bill language in front of us. The Chairman's idea is to create a Small and Disadvantaged Business Ombudsman at SBA. I want to hear your views on this. I want to know your thoughts to see which way I go. But a strong piece of the bill is the requirement that agencies negotiate plans to achieve the small business participation goals. Instead of just failing to meet the goals every year, let us find some way that we can get them done. Whether that requires a new position in SBA or whether the task can be handled by the Associate Deputy Administrator, that is one of the questions.

The bill would also increase the small business goal from 23 percent to 30 percent. Thirty percent sounds better than 23 percent, but when you are not getting 23 percent done, what do you need to do? My view is that let us get to the first goal first before we worry about trying to raise the goal when we are not getting the performance we need.

So these are some of the things that I hope that you will get out on the table, and I apologize that I am not going to be able to be with you today because we have got—we are going to be talking about ergonomics in the HELP Committee, and some of you in small business have spoken to us about ergonomics in the past. So I am going to go see if we can make sure that that comes out well.

But, again, Mr. Chairman, thanks for your leadership. Thanks to all of you for joining us today.

Chairman KERRY. Thank you, Senator Bond. Let me just acknowledge that I appreciate particularly Michael Robinson coming down from Massachusetts from the Procurement Technical Assistance Center there. I understand the skepticism, and I mentioned it, Senator, before you got here, about sort of moving the goal when we acknowledge we are not where we are, but it is a little bit like, if you change your culture and you actually put in place the kinds of tools necessary to get somewhere, sort of like changing a team, you know, you get a new coach who comes in and says, "I do not care about your less-than-winning-ways last year." We are going to set a new goal, and this is how we are going to achieve it, and that is how you create a Super Bowl team. That is how you turn people around is by raising the standards and moving further.

Senator BOND. OK. OK.

[Laughter.]

Senator BOND. All right, the Patriots beat the Rams, now, damn it, we have been getting along good.

[Laughter.]

Senator BOND. I mean, we have got this Democrat-Republican thing, we can overcome that. But if you want to rub the Patriots in my face, just because you got lucky—

Chairman KERRY. I did not know—

Senator BOND. I mean, Brady did a hell of a job, but, damn, do not go rubbing it in, OK?

Chairman KERRY. Sensitive, sensitive, sensitive.

[Laughter.]

Senator BOND. You got a raw nerve. I will tell you what.

Chairman KERRY. I never mentioned the name. I was thinking about Vince Lombardi, not Bill Belichick.

Senator BOND. We do not speak of rope to the family of a man who has just been hanged.

[Laughter.]

Senator BOND. And you do not go giving me Super Bowl analogies, but outside of that we are good friends.

Chairman KERRY. Gees, you do take it personally.

Senator BOND. Yeah.

Chairman KERRY. Senator, let us just try to do better.

General you were next, and thanks for being patient.

General HENRY. Thank you.

Chairman KERRY. We look forward to your ongoing comments.

General HENRY. Mr. Chairman, Senator Bond.

First, Mr. Chairman, let me thank you and Senator Cleland for your help with our corporation on the no-year funding for 2002. We certainly appreciate your effort in making that happen so that we could deal as business people, rather than being a little bureaucratic on it.

I think that the answer that I would like to bring to you, in response to the question concerning whether or not the legislation and whether or not the programs that we have, what I see, from a standpoint of having been the Army's competition advocate general, and having been the senior procurement executive at the Defense Logistics Agency, is that the goals that we have can be met, but the problem is in the execution. I would suggest that this body look at putting some teeth into why you are not meeting the goals.

I look at this both from the Federal Executive Branch and from the prime contractors.

We all know that bundling is not working for the small business community, and we can sit and do a lot of jawboning on that particular issue. I think that what you need is that you hold the Executive Branch responsible. I would even advocate so far, if they did not meet their objectives on it, that you withdraw contracting authority. Angela, you may not like that. But nothing will get a senior executive officer's attention faster than realizing that he can no longer award the contract.

So you have got a lot of contracting agencies around the Federal Government, and there is not a problem with finding somebody that can award a contract. So you have a goal, you have a target. If they are not meeting the goals, the answer is not "why not?" It is "we withdraw your authority until we find out that you can do it."

Having said that, that leads me to the Ombudsman issue. Back in 1984, this body enacted the Competition in Contracting Act, and I was fortunate enough to become the Army's first competition advocate. I was an ombudsman for increasing procurement in Army procurement. I worked for two great gentlemen—the Secretary of the Army, John Marsh, and General Wickham, who was the chief of staff, and both of them granted to me the authority to stop a procurement if, in my opinion, it did not meet the Competitive Acquisition Exec.

What we did is, in 3 years we went from 34 to 64 percent, and I found out that while this was a new position, four stars in the Army took notice when they realized that I had the ear of the Secretary of the Army and the chief of staff of the Army.

So I would say to you that the Ombudsman should never be below the senior level, reporting directly to the senior person in the organization, and you give the ombudsman the teeth to stop a procurement if, in his opinion, it does not meet the goals and objectives going forward. I believe that if you do that, you will see some very, very substantial advantages.

I have spoken too long.

Mr. DASILVA [presiding]. Thank you.

Hank, you were up next.

Mr. WILFONG. To me, John, it is simple, and to the Senator. Monitoring, compliance and enforcement. I hold the Ombudsman Act very highly, and a number of that 95–507, 99–661, 101–560, 101–510, all of them are great acts and great laws, but if they are not monitored and enforced, what good is it to pass another law?

So my thing here today, the one note that I came here today is to monitor compliance and enforcement.

Mr. DASILVA. Ron, you had yours up next?

Mr. NEWLAN. Thank you, John. It is too bad the Chairman left, because I come from a background similar to his, active duty Navy and then came to the private sector. The general, and others around the table, I am sure have a—I know the general does—and others have a military background.

Basic training in the military is you do not give responsibility for a function unless you also give them the authority to carry out that function. We see too few people in the Federal procurement busi-



ness that have both the responsibility and the authority to change a procurement, make it a small business set-aside and to assist towards the 23-percent minimum floor, which I prefer to call it, other than the goal.

So I would look around and see who in the departments and agencies has the authority and has the responsibility. I think the Secretary, Secretary of Transportation, Secretary of HUD, Secretary of Defense, clearly, has the authority and the responsibility, but as you go down the organization, I do not see many people, and none of them are held accountable.

The OSDBUGs might have a responsibility, but they do not have the authority, in most agencies, to change something. They recommend; they do not dictate. I think we have got to focus on giving somebody, in all of these departments, who is close enough to the action both the total authority and total responsibility to hit the 23- or 30-percent minimum.

Thank you.

Mr. DASILVA. Steve.

Mr. DENLINGER. Thanks, John.

The Senator asked the question: Why is it so difficult to participate in the Federal market? Just as one example, I have a meeting at 1:30 p.m. with a Member of ours, a high-end security services firm in the computer side of security services, who is working on the upgraded security at the Pentagon after the September 11th situation. We have got a situation where the impact of bundling is being felt beyond the initial bundled contract. There is a very, very large contractor there that is performing work all across the entity, and our company is performing an 8(a) contract, and what is happening is the pieces of work that our company is doing are now being carved out and being lateralled over to this giant, huge contractor. There are some provisions, as you know, that provide safeguards for 8(a). You cannot take away work from an 8(a) company if that work was formerly 8(a).

I think those same kinds of safeguards need to be put in place with respect to whether it is HUBZone or veteran- or woman-owned and so forth. So it is not only the bundling of the contract to begin with, but it is the tendency of the agencies to funnel work into that bundled contract work that is being performed by other small businesses.

I want to commend you for the other pieces of legislation that you have put together. They are really terrific. The Ombudsman Act, I have got a couple of pieces that I want to suggest to improve that.

The combined HUBZone parity, 8(a) parity situation, brings to my mind something that I think we are all going to have to face, and that is that it is getting to the point where we need to reconcile how all of these programs work together or do not work together. We have some programs like 8(a) that has a procurement mechanism and no goal.

We have the women's procurement program that has a goal and no procurement mechanism and SBA is finding it difficult to implement that procurement mechanism legislation which was put in place a couple of years ago.

HUBZone has a goal and a procurement mechanism. Veterans has a goal, but no procurement mechanism. Some of these programs have price preferences, some of them do not. I sat down a couple of months ago, and I read guidance in one of the agencies to contracting officers as to how to deal with these preferences. I have been involved in this work for 30 years, and I have never been so confused in my life. We are going to have to reconcile all of these programs so they are all treated equally, so they are uniform, so contracting officers can understand exactly how to proceed and give them the responsibility to meet the goal.

I commend you for the 30-percent goal. That is a big, important step forward. If you give agencies a minimum goal, they will achieve it, and they will stay right there. So it is time to move forward to a more aggressive role.

Thank you.

Mr. DASILVA. Thank you. I will pass it on to the Chairman.

If I could just make a couple more housekeeping remarks. When you are recognized to speak, if you could take the microphone nearest to you and put it by you so that we are sure that everybody can hear. The acoustics in here are fairly good, but this will help a bit. If I fail to state your full name, which is a little habit of mine, if you could state that so the court reporter can take that down.

James Turpin.

Mr. TURPIN. Yes, just a quick point. Getting the contract on the front end is only part of the problem. I think we need to look at the other end of the process and getting paid in a timely way and the payment protections under the Prompt Payment Act, you can get paid on Federal work, but if it is a Federal grant, then it falls under the State payment protections, and in a State like Massachusetts, you could very easily be working in six or eight different States in a very small radius, each of whom have a different payment law, and you do not know when or how you are going to get paid.

Also, back in 1988, we experimented with direct disbursement, and that was very quickly abandoned. But I think with technology being what it is today, we should be able to do direct disbursement because if you do not get the cash flow on your contract, then you may not be in business to finish the contract. So getting the contract is only the first step. You need to get paid in a timely way so you can be there to do the next contract.

Mr. SMITH. John, may I jump in with a question?

Mr. DASILVA. Certainly.

Mr. SMITH. James, what do you observe in terms of prompt payment and a difference between prime contractors and subcontractors in dealing with the Federal Government? Our impression is you at least have a Federal law that provides some protection for the primes, but what sort of flow-down is there to make sure that subcontractors get paid promptly?

Mr. TURPIN. Well, there are certain protections in the Prompt Payment Act for construction, but it depends a lot on the general contractor and how they pass that on through to their subs. That is one of the reasons we are advocating for direct disbursement, where it will not have to go through the general to get to the sub.

If you have completed your work in a timely way, the general signs off on it, then you would get your payment, instead of it going through the general and you having to get it through the general. You can shorten the process if it just goes directly to the person who has completed their work and is entitled to be paid.

Mr. SMITH. Does the law currently provide for a time frame that says once the sub has submitted the invoice, the clock is ticking, and you have this many days, that is comparable to what the Federal relationship with the primes is? Is there any kind of time line for subs or is it when they get around to it?

Mr. TURPIN. There is, but it is not always enforced.

Mr. SMITH. Not as robust?

Mr. TURPIN. Or consistent. It is not consistent.

Mr. SMITH. Thank you.

Mr. DASILVA. John Turner next.

Mr. TURNER. Yes. We do support the Ombudsman bill, and we are encouraged by the comments that have been made around the table concerning the importance of monitoring, and compliance, enforcement, and the ability to stop procurement. We also are encouraged by the acknowledgement that bundling can have an adverse effect on procurement.

We strongly urge, on behalf of the Minority Business Enterprise Legal Defense and Education Fund, that we not go all the way down the road in analyzing the Ombudsman Act without taking into account the report of the Commercial Activities Panel, which has endorsed the use of best value.

Our organization has taken the approach that the best-value approach to contracting is a Trojan horse designed to kill that small and minority business person.

We had a case in point, when we were retained by the Department of Energy to do a "lessons learned" piece of the Superconducting Super Collider Project from many years ago. One of the things we learned was—and I was project director of that, so I am speaking firsthand—the people there said we have got a project to build. We do not have time to pay attention to goals for minority, women and small businesses.

Our fear is that best value will become, in 2002, what bundling was about to become before the turn of the century.

Mr. DASILVA. Thank you. I want to point out that this is an issue that has been raised to the Chairman. We were actually trying to help a firm that should have been awarded a contract, but when it became apparent that it was going to go to that small business, they changed the best value makeup so that they wound up losing that contract.

Mr. TURNER. If I may, one of the fears that we have is that the rampant use of best value will take away the effective ability of the agency to monitor and to stop a procurement because there will be no staff on the Government agency that would be in regular contact with the people, with the big companies that are designing, and building, and carrying out that procurement. So—well, point made.

Mr. DASILVA. Ralph Thomas, next.

Mr. THOMAS. Thank you.

One thing I want to say is that, and I think I am the only Government agency here, other than, of course, Angela——

Mr. DASILVA. SBA is here.

Mr. THOMAS. Oh, I am sorry, Fred, not on purpose, believe me, and, Steve, just ignore it.

[Laughter.]

Mr. DASILVA. We have two PTACs, as well.

[Laughter.]

Mr. THOMAS. I want to say that if a Government agency wants to meet a goal, I mean, furiously wants to meet a goal, it is definitely possible. Congress required NASA in a bill in 1990 to award at least 8 percent of its prime and subcontract dollars to small disadvantaged businesses, and we embarked on a plan, on an aggressive plan utilizing the law very aggressively, and we went up, and up, and up and now we are at 19.3 percent.

We have gotten awards from virtually every trade association in here, including the National Association of Small Disadvantaged Businesses, the U.S. Pan Asian American Chamber of Commerce. We recently got the award for women, and others, if I missed you, I am sorry. So, if you can please that many entities at the same time, you must be doing something right.

Having said that, I think that we understate the progress of small businesses and procurement dollars when we do not count at all for subcontracting. Subcontracts are very important to NASA. Recently, when an astronaut was putting the robotic arm on the space station, what kept that astronaut alive were batteries manufactured by a small minority business. The device that they used to communicate with the inside of the shuttle and Houston is a device manufactured by a woman-owned business on a subcontract, both of those things on subcontracts. So I think, with NASA, with the emphasis that we have on subcontracting and not to count it all, recognize it all, I think understates progress.

Having said that, in terms of prime contracts and 30 percent, I think some recognition has to be done about the budget makeup of all of the agencies. NASA does not have 30 percent of prime contracts left over, after large contracts are—the space station, the space shuttle, the Jet Propulsion Laboratory. So I think we have to talk in terms of what the budget makeup of the agencies are. I mean, all agencies are not the same.

We have consistently met all of the goals we negotiate with the SBA, but in terms of across-the-board goals, certainly, what applies to the Department of Interior does not apply to NASA.

Mr. DASILVA. I am going to turn it over to Cordell in a second. I am just anxious to speak to this.

Just a couple of points. One, the Ombudsman Act does not require every agency to meet a 30-percent goal. It requires a governmentwide goal, and I know Cordell really wants to speak on the topic of the prime and subcontracting, so I am going to let him do so.

Mr. THOMAS. I know that is not what you require, but sometimes that is the way it is implemented across the board. I think that that does not set all agencies on a level playing field.

Mr. SMITH. Ralph, you mentioned you had an 8-percent goal that was set in, what, 1992?

Mr. THOMAS. No, it was set in 1990.

Mr. SMITH. That is a unique goal for the SDB program for NASA?

Mr. THOMAS. Right.

Mr. SMITH. That does combine prime and sub; is that right?

Mr. THOMAS. Right, yes, it does.

Mr. SMITH. But the governmentwide 23-percent, possibly 30-percent, goal currently is prime contract dollars.

Mr. THOMAS. Right. What I am saying is other people never meet a 23- or 30-percent goal as an Agency because of the way our structure is.

Mr. SMITH. It is just also the nature of what you buy, and I know the Department of Energy is similarly situated.

Mr. THOMAS. Right.

Mr. SMITH. I know the OSDDBU Council has been trying to kick this around back and forth trying to figure out a way to handle this. Have you come up with something other than, I hope, adding the numbers together? Because I think my main concern about the approach of taking prime dollars and subcontract dollars and adding them together and saying, X plus Y equals the number of dollars we gave to small business, is, for example, we had the discussion with Mr. Turpin a moment ago about there being a substantive difference between subs and prime contracts and their value to small business. I am afraid you add apples and oranges together when you do that.

Mr. THOMAS. Well, they may or may not be. A prime contract may or may not be more important than a sub. On the space station, where you have—what is more important? A million-dollar subcontract or having the \$2.2 billion prime contract? Certainly, in that situation, the subcontract—

Mr. SMITH. Have you all—I am sorry—have you all come to any kind of discussion or any kind of conclusion on what you are recommending on this front?

Mr. THOMAS. Not yet, but prime contracts should count as prime contracts and subcontracts as subcontracts. Yes, sometimes we add them, but always distinguishing it. We may say we are doing 32-percent total dollars with a certain amount prime and a certain amount sub. I think that being done, I do not see any problem with that.

Mr. SMITH. Another way to tackle this that I find quite interesting is Pete Aldridge's memo, the Under Secretary of the DoD, he did the attempt to create a report card for the executive branch—he had a grade for prime, and a grade for sub, and a grade for this goal and that goal, and then came up with an overall assessment.

Mr. THOMAS. Right.

Mr. SMITH. I think that that is a good approach to come up with an overall grade, but without taking the prime and sub and adding them together, which I think is potentially misleading.

Have you all any thoughts on that approach?

Mr. THOMAS. Well, I have seen Mr. Aldridge's formula and like it very much. The OSDDBU Council has been working on setting standards, coming to a consensus on setting standards for grading

Federal small business programs. Whatever the formula is, it has to recognize what my problem is.

Today, subcontracting is not recognized whatsoever at all. The scorecard does not recognize it at all, when putting goals, overall goals into place, whether it be 23 percent or 30 percent. There is no recognition of subcontracting at all, when it is very important, extremely important to the future of small businesses.

Mr. SMITH. When you report your data to FPDS, just to—I think you are saying this, but just to be clear—when you report your data to FPDS, the Federal Procurement Data System, and you say we had X prime contract dollars, it is prime contract dollars.

Mr. THOMAS. Right, absolutely.

Mr. SMITH. There is no mixing of the two.

Mr. THOMAS. Absolutely. Whenever we talk about it, we distinguish what is what, but it does not matter because we have gone way up in prime contract dollars too. In fact, we have the fastest rate of increase of any other agency in the last 7 years. Just because we are strong in subcontracting, we do not stop prime contracting. That is extremely important, but we can only do what we have left. We cannot create something that is not there.

Mr. SMITH. Thank you.

Mr. DASILVA. Ms. Styles, I believe you are next.

Administrator STYLES. Thank you very much. I just want to let you know how much I appreciate the opportunity to be here today and how much this Administration appreciates the support of this Committee as we move forward assessing some very difficult problems that we have.

I categorize them into four categories as we look at the task that we have ahead of us, where we are looking at addressing the issues of access of small businesses, we are looking at contract bundling, we are looking at the transparency of our contracting system, and we are looking at accountability. If there is one thing I can focus on, it is: governmentwide we are really looking at accountability.

I consider my job to be one to ensure that our procurement system allows small businesses to flourish, and I can tell you that has not been the commitment of my office over the past 8 to 10 years. We are really taking a very hard look, I think, at what has been created through the past 8 years of acquisition reform and the situation of small businesses as a result.

I think it is really antithetical and something of an anathema to the President to have small businesses come in and say we have to hire a lobbyist in Washington in order to get a contract, we have to go and knock on the door of every agency. We have to be a prequalified contractor and then go knock on doors. We have created, I think, a system that you have to get the inside track on procurements at different departments and agencies. We have created, I think, a system that is favoring the access of a few, to the detriment of many, including small businesses.

In March, the President made a real commitment to move forward on many small business issues, but in particular he focused on several of the government contracting issues related to small businesses and has asked my office to make recommendations to him. I think our working groups have been working very hard moving forward.

I think we will have recommendations ready this fall on two of the key issues: one is contract bundling and the other one is the state of our system in terms of access, the openness of the system and the transparency of the system. But the group we have put together is a good group. I think they are really people at the departments and agencies that are committed to small business, and I think the recommendations that come out will be good recommendations.

Thank you.

Mr. DASILVA. If I could just ask one quick follow-up question on the President's proposal. One of the things, though we are thrilled to see the level of attention this is receiving, one of the things that has come to the Committee's attention, the concerns that have been raised to us, are the consequences of going to complete, full and open competition and what that means for small business—set-asides, for reserving contracts for 8(a), for HUBZones and for the individual small business programs.

Can you sort of elaborate a little on what is envisioned by full and open competition?

Administrator STYLES. It is not a move back to CICA, in terms of full and open competition for everything in any respect. The problem I think we are seeing is that you can have a thousand people on a schedule, and a department or agency only has to go to three. So small businesses simply never find out about the opportunities, and we have to make sure that those task and delivery orders are transparent, that they are open, that people know what the needs of the departments and agencies are.

That does not mean that we are getting rid of the many good things that were created during acquisition reform and the many different contracting vehicles. It is not to remove a focus from other statutory requirements, it is just a recognition that there is a real problem here with the procurement system, in terms of us telling people what our needs are, and us continuing to contract with large contractors, and departments and agencies continually going back to the same contractors and never telling the public what their needs are.

Mr. DASILVA. Joann Payne.

Ms. PAYNE. Thank you.

I wanted to basically discuss, first of all, the proposed bill by the Senator, where I think it would necessarily advocate for small, disadvantaged businesses. Women are left out of there, so it would be nice to sort of take that Executive Order and legislate that, as well, as part of this—

Mr. DASILVA. Just a clarification, it is small and disadvantaged business ombudsman, and the legislation itself within the text does cite gender issues.

Ms. PAYNE. Yes, but women are not considered disadvantaged in these programs, so the bottom line is I think you really have to take the Executive Order that was signed by the President and sort of legislate that and make that a law and include them in here.

You talk about gender issues. What does that mean, in all honesty?

There are a couple of other issues I wanted to address, and since I do women's, I would like to do that, if I may. I believe it is impor-

tant that SBA develops MOUs with all of the Federal agencies. SBA has one with the Department of Transportation and has streamlined the certification process, even though women have to jump an additional hoop to do so, and that is another completely different issue.

I think it is also important to strengthen, and I think Ralph Thomas is right on the nose here, to strengthen the Federal subcontracting program by eliminating sub—I, personally, would like to see the elimination of most, as we know it today, subcontracting plans. I think it is so much easier to just have direct goals on our contracts and for subcontracts and just get it done. I mean, that is just the bottom line. If you want to make it work, that is the way you make it work.

Develop a program, which I just said, sort of a women's contract program, which I think is on hold right now because they cannot figure out how to make it work.

Strengthen all of the certification programs and streamline or consolidate the certification process amongst all of the agencies; adjust the accounting and tracking procedures for contracting goal achievements. Minority women get counted four times, sometimes five, as far as the goals are concerned, counting the goals. Minority men can get counted three or four times. Women can be counted twice. So, when you see a goal of 23 percent or being reached at 22, whatever it is, fiscal year 2001, the chances are it is probably closer to 18 and 20 than it is the 22 or 23, just simply the way they count and track the goal.

Legislate enforcement procedures for prime and subcontracting goals. I think that is extremely important. The other thing I want to stress, something that John said, is best value. It seems to me, from my experience, best value procurement can create a good ol' boy system within the Federal contracting community. I mean, it just makes sense to me that if you are going to go with best value and you are not going to take into consideration the contributions that women, and minorities, and small businesses make to this country, to this Government, what is going to happen is that it is going to be a lot easier for contracting officers to just sort of give it to the Microsofts of the world. I mean, for goodness sake, that makes common sense.

The other thing that John said, also, that I thought was important is that our talking about taking the goal of 8 percent for NASA, combining the subcontracts and the prime contracts, my women that I represent in the Disadvantaged Business Enterprise Program, basically, they do some prime work, but basically they are subcontracting. They do about \$2 billion a year or something like that. Together, women and minorities do about \$3 billion a year. I do not think it matters if it is flowing from a prime contract—or if money flows from a prime contract or a subcontract. It is money, and it is going into the hands of small businesses. I think that is extremely important.

I mean, I do not get the argument. I am sorry, Mr. Smith, I do not get the argument of separating—counting them, but adding them together and reaching that goal. You could reach a goal of 30 percent by combining both.



I just wanted to say that, as far as the proposed legislation, it just seems to me that with powers to report, review, analyze and coordinate, without the agencies' authority to enforce, will simply establish another person or entity that celebrates the problem, but we do not solve it. I think that is really, really important.

Mr. SMITH. I guess the question that I would have for you, and perhaps you have heard from your Members on this or perhaps they have not run into this problem, but we have heard it from other associations, that once a firm gets relegated to a subcontract level, they tend not to come back, basically, because their chances for exposure to the contracting officer are reduced, their interaction directly with the agency, their opportunity to hear about upcoming opportunities. So once we say there is no distinction between the two, then basically they get permanently at that status for subcontracting opportunities and not to get their foot in the door to hear about the prime contracting opportunities.

The reason that I think that that is important is for establishing past performance history—dealing directly with the Government agencies, managing the contract themselves and getting that experience—and I think there is a value-added there. That is what we have heard. Perhaps, you are hearing differently from some of your members or have you heard that concern?

Ms. PAYNE. I think we are talking about, at the end of the day—

Mr. SMITH. The money, yeah.

Ms. PAYNE. The money. Ralph Thomas, at his desk, putting the two together. I think that is totally different than out in the field and contracting as prime or subcontract.

However, I will tell you, in the construction industry, and the subcontracting association can speak to this, a lot of subcontractors do prime work, and a lot of prime subcontractors do subcontracting work. I mean, a lot of that gets done. So I really—

Mr. SMITH. I certainly can see your point, and I agree that a dollar is a dollar, however it comes to you. The question is whether it gets to you and whether you get the contract opportunity in the first place. I think that is the concern that we have.

Ms. PAYNE. I think that is where you start with getting rid of these subcontracting plans, No. 1, and not moving towards the best value procurement kind of thing. Of course, the bundling. Thank you so much for addressing that issue. That is extremely important because it devastated small businesses, and I appreciate that.

But the bottom line is that, without enforcement and without direct subcontracting procurement, with goals on actual contracts that have got to be met, if not, the prime contractor just does not get the job. That is absolutely the way to go if you really want to make this work.

Mr. DASILVA. Thank you. I am going to turn it over to Senator Carnahan so that she can make some remarks.

**OPENING STATEMENT OF THE HONORABLE JEAN CARNAHAN,  
A UNITED STATES SENATOR FROM MISSOURI**

Senator CARNAHAN [presiding]. Thank you very much, John. I want to thank all of you for being here this morning and participating in this roundtable. I particularly want to thank Morris Hudson for being here. I have worked with him. He has worked with

our office, and we have been helpful in getting some funds for Procurement Technical Assistance Centers. So it is good to have had that opportunity.

I hope that today's discussion will lead to some substantial improvements in our understanding of the shortcomings of Government procurement policies. Certainly, having all of you here is a very impressive collection of experts, and we look forward to learning from your comments.

I believe this Committee will benefit from hearing about all of your ideas on how we can expand procurement opportunities for small businesses, especially among minority- and women-owned businesses. I have met with many small business owners throughout Missouri, and I have always been impressed with their dedication to their dreams. They are people who actually put some fire to their dreams and work for the things that are so meaningful in their lives and in their communities.

Small businesses have become really the engines of our economy, and the Federal Government should be able to play an important role in promoting their growth and their success. Last year, the Federal Government spent more than \$600 million purchasing products and services from small businesses in my home State of Missouri. This is an impressive figure, and it is certainly a testimony to the many hardworking business owners in our State. But it is less than 10 percent of the total Federal procurement dollars spent in Missouri, and that, indeed, is disappointing.

I look forward to working with my colleagues to improve Federal purchasing policies to provide even greater opportunities to small businesses. One of the first steps we can take in this process is to address the problem of the so-called bundled contracts. I am very pleased to be an original co-sponsor of the Small Business Federal Contractor Safeguard Act. This legislation will ensure that Federal agencies do not consolidate different procurement requirements into such large contracts that small businesses can no longer effectively compete.

Congress tried, at one point, to remedy this problem, but, unfortunately, agencies have abused this and found loopholes in the current law. So I hope that we will act this year to close some of those loopholes and increase the opportunities that are available to small businesses.

I am also looking forward to hosting a procurement conference later this summer in Missouri. As Morris knows, the Science and Technology Conference will be held at Fort Leonard Wood, and it will provide small businesses an opportunity to meet with some of the top officials from the Defense Department. They will be able to demonstrate their products and learn about the procurement needs of the military.

I hope that business owners and procurement officials will take the opportunity to establish relationships that can lead, ultimately, to greater contracting opportunities for small businesses.

So I look forward to hearing from you. Certainly, I will be reading your testimony and reviewing the transcripts that you leave today.

Again, I thank you for being here and for the opportunity that you give us to hear and to learn from you.

Thank you.

I would like, at this time, to turn the microphone over to Pat Parker and to hear from her.

Pat.

Ms. PARKER. Thank you. Good morning, Senator, John, Cordell. My name is Patricia Parker.

First of all, I want to take a little different perspective and view on contract bundling, and I want to come from a point where—because I used to be a Federal employee, and I have worked in program, and I have worked in contracting. Now I am a Native American woman-owned small business contractor here in the area and also with the National Indian Business Association and Women Impacting Public Policy.

I understand that sometimes enforcement and accountability, and I agree with that, and I think there is not anyone at the table that would not agree that we need to do that when it comes to procurement, especially with contract bundling, but sometimes when people are forced to do something, they are a little less enthusiastic about carrying out the process. I find that when people are more willing and want to do something, the process speeds up, and more is accomplished, and a lot more gets done.

So I just throw out this concept to look at it from a little different perspective, and one might say from more of a nurturing side, but I think that is a good thing about who we are as women, that we are able to look at something from a little different perspective sometimes.

We know the bottom line, when it comes to contract bundling and the large businesses out there, is pricing and their ability to have a competitive edge, and as small businesses we all know that is what we are out there marketing for, competitive edge.

If we could, perhaps somehow, when a large prime contractor meets their subcontracting plan and gets out there and let them demonstrate it, so we do not put that on the responsibility always of the Federal program person out there, a contract person there because we all know that part of the reason for the contract bundling is the lack of contracting staff. They are already overworked, and when you start asking them to do more paperwork and more requirements, sometimes that can slow the process down, rather than actually expedite it, which is what we are all trying to do, make it easier and faster to do things.

So, if we are looking at that, and we are asking the prime contractor to take a responsibility that the Federal Government cannot do right now because of the lack of staff, which is to encourage small business, make sure that small business is there at the table to be able to play and be part of these large procurements, then perhaps incentives to the prime contractors can help facilitate that, and it is not necessarily more money.

Maybe if they come in and meet their subcontracting goals, and they demonstrate to the contracting folks and to the Federal agency that they are meeting that, they get some kind of price evaluation to give them a competitive edge when they are out there also trying to compete for contracts. That brings everybody wanting to make this happen, rather than, in some cases, begrudgingly, if it is going to mean more paperwork or I am going to have to, as large

primes will say, I have got a bottom line, I have got stakeholders, we have to go with the best price and the best quality.

So maybe some incentives, from that standpoint, if we could look at that, might be able to help facilitate a faster progress than always just coming in and thumping people on the head if they do not do what they need to do. However, sometimes a thump on the head is necessary, and so I do not want to discount that.

On Friday, I was very honored to be able to speak before OMB on the competition and contracting review, on behalf of Women Impacting Public Policy. We had made a suggestion that I thought was, as far as the enforcement—when you want to get somebody's attention, obviously, the pocketbook is always the way to get somebody's attention. So we recommended that perhaps, for every percentage that an agency fails to meet their goals, their budget be reduced by that amount. Perhaps that would give them incentive to go out there and make sure that those goals are met.

Thank you very much.

Mr. SMITH. May I—I am sorry, please.

Senator CARNAHAN. Go ahead, please.

Mr. SMITH. No, Senator, you get to—

[Laughter.]

Senator CARNAHAN. In that case, I will ask Cordell if he would like to ask a question.

[Laughter.]

Mr. SMITH. Very well. Just to clarify. Your view is that the subcontracting plans are an appropriate approach, that if you did away with them and had it all direct Federal mandates, you would then have the problem of getting staff to police that; is that what you are saying? So your view is slightly different.

Ms. PARKER. It is slightly different, looking at it a different way. I mean, I am not saying that—subcontracting plans are what we have now. I guess I am looking at what have we got now, what have we got to work with? Yes, if we want to work with legislation to try to improve it, but that is a process that is going to take a while.

Small businesses, we have got payrolls to meet next week.

Mr. SMITH. Right.

Ms. PARKER. We want to make sure that we try to get to the table and get some of that pie right now. While we are doing what we have to do to push legislation and make sure everybody can participate, that is great, but I also want to look at what we can do immediately. If the subcontracting plans are what we are having to live with right now, how can we encourage and facilitate primes to help us, not try to cause a little bit more of a tougher hand? I would like to want them to participate because, as I say, I find it's a little quicker, you get things done quicker that way.

Mr. SMITH. Thank you, Senator.

Senator CARNAHAN. Thank you. Before I leave, I will take advantage of another senatorial prerogative and call on the gentleman from my State, a constituent, Morris Hudson, to speak next.

Mr. HUDSON. Thank you, Senator. I appreciate that very much.

I know we are getting short on time, so I would like to make my comments concise and address each proposed bill.

First of all, on Senate bill 1994, I think it is time that priorities are established. I think this is badly needed. I do have a question about whether the preferences would be optional or whether they would be mandated. So that is one issue I have with that bill.

On Senate bill 2466, Small Business Federal Contractor Safeguard Act, on bundling: I think defining the problem better will help. I think bundling is a major problem, but there is no need to discuss that further. It has been discussed and seems to be unanimous.

On the Ombudsman Act, I have concern with that. I am not opposed to it, but I do have concern about it, that it might just become another Federal bureaucratic activity. There does not seem to be any direct contact with the small business people, and that is one thing that concerns me with that act.

In the Procurement Technical Assistance Centers, we work with businesses in the trenches on an hourly or minute basis, and there is a lot of frustration out there. I think this Committee may have, within their prerogative, to eliminate some of that duplication, and I will mention one example: If a company is going to do business with the Department of Defense, such as Fort Leonard Wood or Whiteman Air Force Base or the Army Corps of Engineers in Missouri, and of course this extends throughout the Nation, it is mandatory that they be registered in the Central Contractor Registry. We help companies with that.

It is also recommended that they be registered in Pro-Net. Many of those data elements are the very same, but they have to enter this information into two different systems. We have heard rumors that the systems would be combined at some point in time, but right now it seems to be only rumors. We would certainly encourage the Committee to look at that and see if that could be done because that would help companies at the working level in eliminating this type of duplication.

Also, and someone alluded to this earlier, we would like to see better publicizing of the requirements, and I am going to quantify this, from the \$2,500 level, credit card level, up to \$25,000. Now, agencies do maybe a good job of advertising this, publicizing this within their own agency or at a lower level, at the base or installation level. But when you are a small business person, you do not have time to go to all of the different websites where you have to track this down.

I would like to see a system similar to FedBizOps that captures these type of requirements and makes them available for the small business community.

Then, finally, I would like to add that a lot of companies have made a lot of progress with electronic commerce, moving into the computer age and so on, but there are still a number of companies out there that could use some assistance in this area. So I would like to see at least some of the funding and responsibilities restored that existed in the Electronic Commerce Resource Centers and see that made available for the small business community.

Thank you.

Mr. DASILVA [presiding]. Thank you, Senator. Thank you, Morris.

I am going to be a little heavy-handed here. I am going to call on Michael Robinson in just a second, and then we are going to have to move on to the next topic because we are running very far behind on time—so I am going to ask everybody to put their cards down until I throw out the next topic for discussion after Michael is done, and I apologize to folks who did not get a chance to speak on this, but as it is 10:30, we are going to need to move on.

Michael.

Mr. ROBINSON. Thank you, John.

Also, from a PTAC in Massachusetts, again, from the trenches, and I would just like to share one anecdote from the field that is a bundling-related anecdote, and it takes it out of the rather esoteric money and contracts and puts kind of a human face on the situation.

We have an 8(a) company that is owned by a service-disabled veteran in a wheelchair. He had been performing on a contract for several years for the Veterans Administration's facilities in Rhode Island. The contract came up for renewal again, and the contract requirements were consolidated into a regional contract, which ultimately was awarded, after a lot of protests, and screaming, and gnashing of teeth, to a Fortune 100 company.

There have been several further protests by the service-disabled vet. He is one of our clients. This service-disabled vet has since been forced to declare personal bankruptcy. This is the human face of a constituent contracting with the very agency who should be protecting his interests, and it is the effect of what we who are involved in Government might call operational streamlining and better stewardship of our dollars. It is kind of a tragic story.

Thank you very much, John.

Mr. DASILVA. Thank you.

We are going to turn to the next topic on the agenda, "Improving the SBA's Small Business Contracting Programs." I would like to throw out two questions for the group: No. 1, Chairman Kerry touched on when he was here, wanted to put out why is the SDB set-aside program a thing of the past and does the Executive Branch have the authority to override the statute?

I want to throw out a second question, as well, one that Senator Kerry has been working on, and I believe the SBA is addressing, is that: Why is certification so difficult for some SBA programs, and should all SBA programs have procedures and applications similar to the HUBZone program?

So, at this time, if you wanted to address these topics, you can put up your cards.

Hank, go ahead.

Mr. WILFONG. SDB set-asides. Why would you figure I wanted to talk about that?

[Laughter.]

Mr. DASILVA. Just a hunch.

Mr. WILFONG. Ironically, I see a lot of answers to a lot of the problems that has been raised. I see SDB set-asides as the answer. The General pointed out some things, and Ralph Thomas pointed out some things. I believe goals can be met if the agencies really want to do it and if they are caused to want to do it.

SDB set-asides, we do not have to worry about subcontracting a whole lot if we have some pieces of action set-aside for competition between small and economically disadvantaged firms. That is one of the positives of SDB set-asides.

I have heard a complaint that, yeah, but, Hank, there is the Roth case and there are other cases about race-based methods. First, small and economically disadvantaged, I have not mentioned race yet. But if we are talking about racial discrimination and remedying racial discrimination, how are you going to deal with racial discrimination if you do not deal with race? Now that may be a rhetorical question. I cannot figure the answer of how can we deal with race discrimination and cause efforts without some consideration of race.

So I think, John, the SDB set-aside is the one thing that I would like to see this Administration address. We had it before. There was a moratorium, and as I recall, the moratorium was so that we could find—and I am generalizing—a better way of doing it. Hell, what we had was working well. Why do you have to find a better way than something that is working excellently?

So I would like to have that moratorium, which was a 2-year moratorium established 7 years ago, removed.

Mr. DASILVA. Fred, would you like to address any of those comments?

Mr. ARMENDARIZ. Currently, the SDB numbers for fiscal year 2001 were 7.12 percent, which is 140 percent of the goal, and is why at this time we believe that the program is working without the set-aside.

Mr. DASILVA. Is that if you combine 8(a) and non-8(a) together for the SDB goal?

Mr. ARMENDARIZ. All 8(a) firms are SDB firms.

Mr. DASILVA. I understand. I know. But this is the first year—for 2001, it is the first year they are actually reporting the goal together instead of breaking it out separately—

Mr. ARMENDARIZ. 8(a)s have always been SDBs.

Mr. DASILVA. I understand, Fred. It is just the first year that it has been reported together, but it is true that all SBA firms are SDB firms, I understand.

Mr. ARMENDARIZ. Correct.

Mr. DASILVA. So that's the position at the time because of the percentage?

Mr. ARMENDARIZ. Right.

Mr. DASILVA. John.

Mr. TURNER. Thank you. The Minority Business Legal Defense Fund also takes a position as the Senator has and as Hank has, that SBA should seriously reconsider the set-aside program, and we believe that is the appropriate way to go.

In the interest of time I will bullet to other comments that relate to that. You raised an issue relating to the SDB certification process, and in our view, to date the SDB certification process has been a disaster, and we stand prepared to work with, as we have in the past, to work with the Hill and the agency to make this process work better.

There are many different suggestions which we will not go into today, but I think it is very important for us not to ignore the fact

that work is required here. The last point is that of course our founder, Parren Mitchell, the author of Public Law 95-507 and the father of the 8(a) program, we have a overriding concern about the—that everything that we do, we must always keep in mind that the pie for 8(a) is getting smaller and smaller and smaller and smaller, much due to the Federal Acquisition and Streamlining Act, much due to other factors such as thresholds of purchasing. We have gone on record on our position concerning the parity or the HUBZone and 8(a). HUBZone is a laudable program, but we must find a way to take the 8(a) program and to provide a greater pool, a greater reservoir for our 8(a) contractors.

Mr. ARMENDARIZ. John, could I make a comment?

Mr. DASILVA. Certainly.

Mr. ARMENDARIZ. I wholeheartedly agree with you in regards to the application process. I think I am probably one of the few people here that has actually tried to go through that process. I drew on my own experience when I came to the agency. The first task force that I assembled, the very first one, was to address the application process. I put a very capable person in charge, Mike McHale, who put together our HUBZone application.

Mr. TURNER. Good man.

Mr. ARMENDARIZ. He is a good man. He has been working diligently in putting together what we believe is a state-of-the-art e-capable application that should be ready for launch in the next 12 months. So we are very excited about simplifying the process and getting more people involved in the program. We have been working furiously as well in regards to keeping the 8(a) numbers up. Last year we increased the 8(a) program \$500 million over the previous year. There was a little bit of a setback in the year 2000, but we came back in 2001 and we want to make 2002 even a better year. So you have our commitment at the SBA that not only is the 8(a) program important, but it is extremely visible to us. We have a lot of new initiatives that are focused directly on that program, and we think are going to revamp the entire mission of the statute.

Mr. DASILVA. I think Ron was next, and then Joann was up.

Mr. NEWLAN. Thank you, John.

A couple of thoughts. The topic we are on is improving the SBA's small business contracting programs. I think it starts with the funding of the SBA's contracting program within the Appropriations bill and the budget. I am not an expert in that area. We have got experts at the table. I do attend the hearings and I hear the SBA Administrator talking about, "Well, we got more money last year, and we got more money the year before that, and we got more money before that, but we are going to do the best we can with what we have." The world was more complex. The Small Business programs are more complex.

The SBA Government contracting program, across the board needs more money. I led a fight for the HUBZone funding which got overlooked by the House, and was restored. But they need more money, and to the extent OFPP might be able to fit that into a recommendation if they happen to agree with me, the Administration and certainly the Senate represented here might be able to help out.



One of the things, if I were there and got more money, I would buy some PCRs, Procurement Center Representatives, and I would go back to a system that worked well in the 1980s, where the PCRs really rode herd over the other agencies, and they did not do an unrestricted procurement without the PCR's personal involvement, the personal understanding and thorough examination. PCRs are spread so thin now, they cannot do that. There is perhaps one third the number of PCRs today to cover the Federal Government than there was 15 years ago.

Mr. DASILVA. I am going to go to Joann, and then Barbara. I would also ask that if anybody else wanted to make comments on SBA programs, put your cards up so I can take note of you. After this we are going to move on to the next topic.

Joann.

Ms. PAYNE. Thank you so much. I just wanted to address something that the SBA advocate over there said. We have talked about the small disadvantaged business and the set-aside issue, and the program is working well at 7.12. The only comment I have is that it does include 8(a) so it means they were counted twice, sometimes three or four times. So my guess is, is that the counting figure is very high. I think that is simply the bottom line. If you are also certified as a HUBZone, counted you 4 or 5 times in that number. So just let me just stress to you it is so important that we reevaluate how SBA counts and tracks the goals because you do not know really what is going on unless you have that. In addition to that, as some of you know, SBA has a MOU with the Department of Transportation in the certification process, which means that women and minorities who are certified in the Disadvantaged Incentivized program should be able to get certified easier as a small disadvantaged or an 8(a). That is the point of it I think.

The reality is that minorities can in fact get certified a lot easier. Women have got to jump an additional hurdle. On the one hand women are presumed to be socially and economically disadvantaged in a nontraditional area like transportation construction, but not so at SBA. So what happens is that women have to jump an additional hoop, and by doing so, there are not very many certified woman-owned businesses in the 8(a) program and on the Small Disadvantaged Business program.

Mr. ARMENDARIZ. First of all, the 8(a) numbers are not counted double for the SDB number, and I will get some information to you immediately after the hearing that demonstrate that to you.<sup>1</sup>

I do not know if Angela has any comment in regards to how the numbers are accumulated, but in that particular case that is not a correct statement.

However, I cannot agree with you more in regards to needing to simplify the fact that companies, when they start working with our Federal Government, need to have a smooth transition into starting to participate in our programs. I do not believe it is in anyone's best interest that we ask small businesses to spend this disproportionate amount of time going through certification programs. One of the other task forces that I would like to launch in the near future is a reciprocity task force so that we can have small busi-

<sup>1</sup> Information is located on page 98 in the appendix of this document.

nesses apply once and be accepted not only within the Federal Government, but across state lines as well. We find that people have to go through and apply in Michigan and if they are doing business in Ohio, they have to reapply in Ohio, et cetera, et cetera, and I think that is just a complete waste of time. We think we can take the lead on that.

Ms. PAYNE. What is interesting, if I may just follow up with that, is that women, with the certification process—and I will be interested to see how you count the 8(a), because I know they are counted as small business and they are counted as others as well, but we will get into that; I would love to talk to you about that. But with the certification—and with the Department of Transportation you have on-site reviews. You have DOT people who actually come on site of a business to make sure that you own 51 percent, you know, all of the requirements. It is an in-depth, thorough certification. My women get denied at SBA by paperwork. I just find it just absolutely appalling, absolutely appalling.

Mr. ARMENDARIZ. I agree that we need to simplify the process. Joann, I would like to have a conversation with you again. I would like to talk about that a little bit further.

Mr. DASILVA. I also remind everybody that the record is going to be open, that you can have 14 days to submit your comments at the end if you did not have a chance to speak to a particular topic.

We are going to go Barbara, Susan, Pam, Steve, and then we are going to move on to the next topic.

Go ahead, Barbara.

Ms. KASOFF. Good morning. My name is Barbara Kasoff, and I represent Women Impacting Public Policy. We are well over 250,000 women-owned businesses right now across the country. I can tell you that 80 percent of our constituency is not only just passionate and angry about this, but they are in a state of despair, and most of them do not even want to try to go through the process as it is right now. It is obvious that we have a very onerous and complex system that is riddled with barriers rather than with opportunities.

I can tell you, I can bring it down even to a more basic level when I can say to you that almost half of our constituency is on dial-up rather than on high-speed access, and they cannot even download a procurement contract to bid on because high-speed access is not available to them.

The President said real clearly that we need accountability. Everybody here in this room has said that we need accountability. I can tell you also that in the corporate world, when the sales department is having trouble getting sales because they are getting constant complaints, when a customer cannot fill out an order form so that they can get the product, and when a warehouse cannot ship a product and get the product out the door, two things better happen in that corporation. No. 1, they had better listen to their customer so they have a real clear understanding of what the problem is, and No. 2, they need to revamp their procedure. We are the customers here in this situation. We need to be part of the solution, not just experience the problem. If legislation was written two years ago and passes, and is not out the door, there has to be a real clear understanding of what is wrong with it so that we can

fix it. The clock is ticking. We are not doing the business that we should be doing—we, the entrepreneurs—and if we are not doing the business that we need to be doing because of these barriers, then the economy is suffering.

I want to state for the record that Women Impacting Public Policy is ready to have a seat at the table. We accept the challenge and we want to be part of the solution.

Mr. DASILVA. Thank you.

Susan.

Ms. ALLEN. Susan Allen, U.S. Pan-Asian-American Chamber of Commerce.

I just wanted to revisit the issue of certification. Fred, you talk about wanting to take the lead in getting reciprocity, which is a good thing, but right now there are more than scores of certification processes around the country, and we have got to live with that. That initiative that you are going to take the lead on is going to take some time. There will be turf battles to be fought all around.

My question is that some years ago, during the last Administration, there was a process for self certification or privatized certification. I think the dialog is still there, and there are still some organizations doing private certification like WBNC, the Women's Business National Council, and NMSDC, but for the Asian-American community, we have 57 ethnic groups within our community, spread across 1 million businesses. Many of them are new Americans. They are not very familiar with the Federal process, and as we know, the biggest procurer of products and services is the Federal Government and all the moneys and opportunities trickle down to the community.

So what I would like to do is to make sure that the Asian-Americans get into the certification program. What we want to do is to educate and tell them that we would help you out, because when we tell them to go to the SBA, they say, "Oh, no, no, no. It takes too long." One told me, "Moving the Federal Government, trying to get something done in the Government is trying to move a destroyer in the middle of an ocean. It takes what seems to be ages to turn a 10-degree corner." So we would like to be able to be considered, our organization, as a certifying agency accepted by the SBA, not that we will replace your program or any other program, but in so doing we can get these Asian-Americans into this process so that they say, "All right, get one certification done, I can move on to the other."

We tried, during the last Administration, to get noticed. They never sent us the notice when the opportunities were sent out for this private process, and I would like to know whether it is still in place, and if so, can we get to the table?

Mr. ARMENDARIZ. The Administrator constantly states that the focus of the SBA programs is to include more of the 25 million small businesses of America. I think it would behoove the SBA to include all different parties at the table and start focusing and drilling down in the different program areas that we need to address, and this is one of them. We encourage your participation, so thank you.

Mr. DASILVA. Pam.

Ms. MAZZA. Thanks.

I thought that Senator Kerry's opening remarks were exactly on point. I mean these are very, very complicated issues that we are dealing with here. You know, fixing the SBA's procurement problems does not involve just SBA. It is a mentality with the agencies that relates to question No. 1: How do you increase commitment to meet goals? What do the procurement people think? What do the contracting officers think? Are they being evaluated on whether or not they have done the best that they can to meet their goals, or are they concerned because of the myth that we still live with, that bigger is better and smaller is more expensive? That is simply not true. So there is a lack of information still out there, or at least there is a myth that just keeps getting generated. I think that the more that we can do to continue to talk to eliminate those concerns, I think the better off we will be.

Ron, your point that PCRs do not have any tools really to do their jobs, nor do they have the technical expertise to be able to—I do not think—to be able to say, “Yes, there is an environmental firm out there that can do this as a small business set-aside or not”. So maybe we are limited with our resources, but can we be doing things to put task forces together to help the PCRs to do their jobs better and to make people more accountable for their decisions. I do not think there is any way they can be reviewing each procurement action to determine whether or not it is an appropriate set-aside or whether small businesses are capable.

I have a couple of specific comments on the legislation, and I commend Senator Kerry and Senator Bond for trying to move these pieces forward. On contract bundling: as a lawyer I think that changing the definition is going to go a long way to the word-smithing that eliminated our ability to go in and say this is a bundled contract, because 3 or 4 years later we see that the definition just really had a lot of loopholes in it and I think that this legislation will certainly help with that.

I have a thought that I throw out for you, and that is that if I read the contract bundling bill correctly, we are going to require agencies—if they procure a consolidated contract over \$2 million and \$5 million—to step through a lot of additional paperwork. I think that a \$2 million contract and a \$5 million contract is not a very large contract. In the IT field that is a few bodies if it is a 5-year contract. There is no reason why small businesses cannot perform those contracts even if they are consolidated. I mean I feel there are small businesses out there, certainly my clients, that could do that contract even if it were consolidated. So perhaps a consideration for the Committee would be to say, “You do not have to step through those studies, over \$2 million, over \$5 million even though you consolidated it, if you are still restricting the competition to small businesses, whether it is through small business set-aside, 8(a) set-aside, or whether you are going out on a GSA schedule but only to small business holders.” So in other words, go ahead and consolidate if you want to consolidate, but if small businesses can still do it, then no need to step through your study as to why you consolidated. I am not sure of any of the down-sides to that, but I think it is something that maybe should be considered.

On your Ombudsman bill, I think that is terrific that you are thinking of protecting the firms as they come in with their problems. I am on the SBA's Regulatory Fairness Committee and with the Ombudsman at SBA on reg. fairness issues. I was surprised, when I got appointed to that Committee, that procurements and contract bundling are not within the purview of the current Ombudsman or the current Regulatory Fairness Board. So there is a void right now, and as we go across the country and we listen to small businesses' concerns, a lot of them want to talk about bundling, and we have to say, "No, we do not have jurisdiction over that." If this bill moves forward, I think it should be clear—I was happy to hear you say that the Ombudsman will be responsible to, it sounds like, all small businesses, including women-owned small businesses, because as I said right now, there is no Ombudsman for procurement, and I think that there is a void. On the other hand, I think that our board and the Ombudsman does not have the resources to do what we need to do, so creating another slot without resources may just be creating another slot that is not going to be effective, so I think that probably that needs to be reviewed too.

Mr. DASILVA. Thank you.

Steve.

Mr. DENLINGER. Thanks. Steve Denlinger, LAMA, Latin American Management Association.

I am going to make a gentle remark about the difference between prime contracts and subcontracts, but let me assure you, I do not hear it gently from my members around the country. There is an enormous difference between prime contracts and subcontracts. It is not just a matter of dollars. Prime contracts give you extremely important experience with the Federal Government, direct experience with the Federal Government. Prime contracts are more profitable. They give you the opportunity to do the good quality work as opposed to the dregs, which prime contractors tend to give you when you are in the subcontract mode.

Also importantly, it gives you the opportunity to get paid on time. I hear horror stories at every turn about members not getting paid by prime contractors, and they are afraid to do anything about it because they will be blackballed.

I am delighted to hear, Fred, that you guys are taking on the issue of reciprocity with respect to certification. It is one of the most onerous things that small businesses have to deal with across the country. Would you please add to that the forms that prime contractors require MBEs and SDBs to fill out every year? Every prime contractor has a different form. Every prime contractor sends that out to our members each year to be done all over again. If you do not submit it, you do not have an opportunity to be considered for bids. If you do submit it, it is a mountain of paperwork. There ought to be one single form, one single intake form that is used by all prime contractors to get the basic data from SDBs, and then if that prime contractor is seriously interested in doing business with that company, then it is certainly appropriate to go ask for this new information.

But that paperwork load is just onerous, and it comes from the very prime contractors, very companies that often complain about

the load of paperwork that the Federal Government places upon them, but they have no problem placing that kind of onerous paperwork burden on our companies.

The extreme case was Lockheed Martin Missiles and Space, which sent one of our companies a 23-page form to fill out to be considered for business there. The owner of the company looked at me and handed me this, and said, "I am never going to do business there. This is ridiculous."

One item with respect to the Ombudsman's monitoring, about a year and a half ago I asked the SBA to what extent are the price adjustment credits being used by the civilian agencies? We know that they cannot be used by Defense right now. We were not able to get a handle on that. If you could make sure that the Ombudsman also monitors the extent to which price adjustment credits are actually used, I do not think anybody here knows the extent to which they are being used at any of the agencies in addition to the evaluation points that prime contractors get for the quality of their subcontracting programs and the incentives at the tail end.

One final item, if at all possible, Ms. Styles, I am wondering if you could comment on the OMB's view of the SDB set-aside with respect to the women's procurement preference legislation. I understand that there is a general sense that the President and the Administration does not support set-asides. Then specifically with respect to the women's procurement preference, that there were issues related to how the study was conducted relating to which areas of Federal procurement women were under-represented in. Secondly, that SBA's approach did not meet the Adarand test. So could you possibly comment on that?

Administrator STYLES. Yes, I can briefly comment on it. It was actually withdrawn by the SBA Administrator, so Fred may be more appropriate to comment on some of the details. Certainly my understanding was that there were some legal concerns with the statistical data that were part of the study, and that we really wanted to, SBA really wanted to firm it up, make sure that it was done right and that it could be legally supported.

As far as our policy: there is not an Administration policy against set-asides from a perspective certainly of my office. I am concerned about the broad procurement policies and the access of small businesses as a whole that we have created a situation in our procurement system that we cannot live with, and that in many respects I think is creating something of a stigma on businesses and small businesses themselves within the procurement community. I hear from a lot of contracting officers on a regular basis, and it concerns me that we have created a system of statutes and regulations that is very, very difficult to understand. Contracting officers do not know when it is appropriate to award to a HUBZone or SDB or an 8(a) or a women-owned small business, and they have to have a specialty in and of their own in order to understand it, and I certainly can sympathize. I did not come into this job as an expert in small business, and it has taken me a great deal of time to get up to speed on the different statutes and regulations and how they work. But I think the overriding concern in my mind is that it is almost as if the contracting officer wants to ignore them, or that it reflects poorly on small businesses, that there is something

wrong, that this is a handout to them, that this is somehow something that they do not deserve.

From my office I have got to help the procurement community get over those hurdles and ensure that we have a procurement system that is focusing on access for all of the small businesses, but that is not—I do not think that is to the detriment or to the exclusion of any particular group.

Mr. DASILVA. I am going to let Steven App make some comments—he has been extraordinarily patient. He got bumped from the last go-round, but then we are going to move on to the next topic, and I apologize because we are running overtime slightly. Surprise, surprise, a Small Business Committee function running over time.

Mr. APP. Just very briefly, I think the legislation is important; we are supportive of it. I think the complexity is a real issue. But the key to it, and the key I think to Treasury's success has been that we had a very strong integrated acquisition planning process that permeates all levels of the Department. We consistently beat the 23 percent. We were over 30 percent last year for prime contracts. We set our goal higher at 28 percent this year. We are doing 26.

The point is that we have instilled a culture in the acquisition planning process so that no procurement is really considered without looking at a small business aspect of it, and it is done through metrics. We can demonstrate metrics to everybody who is thinking about doing a contract, that the service quality and the cost advantage is very real, and that is how you do it. Legislation is important. Complexity you have to work through, but a strong, integrated planning process I think gets you over the hurdle of people trying to move through the cycle times quickly because they have not planned for it. Program people, procurement people, small business people, all together—integrated planning is how Treasury has been successful.

Mr. DASILVA. Thanks, Steve.

We are going to move over to the last part of the agenda, which is specifically on the legislation. We have heard a lot of comments on the proposals before the Committee, but I did notice that a lot of questions have been raised. Senator Bond raised some questions as well. So I wanted to throw out a couple of general things to start.

No. 1, I hope to hear some more feedback on increasing the goal to 30 percent, whether that is achievable, whether we should take the idea of looking more at agencies that can do more on an individual basis. I want to talk about the 8(a) HUBZone Priority Preference bill and the 20-percent evaluation preference within the legislation, what people felt about that.

Cordell, did you have any other specific issues?

Mr. SMITH. No, I think that covers it.

I do think that I would be interested in knowing what is currently done in terms of efforts to try to help agencies that fall short of their goals, whether anyone currently does anything to negotiate goal attainment plans. I think that a real strength of the Ombudsman bill is requiring that, but I do not know what is being done. My sense is we hear about it by accident, when somebody decides

to do that, but we do not know that there is anything done systematically now, and maybe that does point to a need for legislation.

Mr. DASILVA. Hank, were you up first?

Mr. WILFONG. Thank you. Thirty percent. You know, John, I think it ought to be 40 percent.

[Laughter.]

Mr. WILFONG. Thirty percent certainty. Forty percent it should be. Twenty-three percent they did not make. I think this is just an indictment against the fact that maximal practicable utilization. Senator Bond talked about maximal practicable utilization. I think that is excellent. So I think 23 percent is too low. Thirty percent is getting there. So I strongly endorse that.

Part of it, John, too, to throw in my little bit, and this will be my final comment, I am totally disturbed by a number of things that are going on right now in the procurement area, and it gets back to this race-neutral versus race-based methods. No way to avoid it. Until and unless we address what was brought out in 95-507, the extensive findings of 95-507, that there was racial discrimination in this country, and that a certain part of the community was being denied equal access to the laws through the procurement system, we're not really getting to it. So my thing is that, as I sit here, some things are becoming very clear to me. Reluctantly, I am accepting the fact that these people tend to want litigation-proof kinds of things as relates to us. They are constantly bringing up the litigation that others are bringing. So I guess probably what I am reluctantly coming to, is that those of us like my association, and the women-owned business association, and maybe the HUBZone, we are going to have to start thinking about getting to our members to start to litigate, because they keep talking about the rights of others and afraid of the litigation of others. Nobody ever seems to bother about whether we are going to litigate or not.

So that, John, if nothing else comes out of this—and reluctantly I sat here and my spirits got lower and lower, and it is because I do not like to sue, but I do not know what else to do if I am being denied.

Mr. TURPIN. James Turpin. I had one comment on the bundling bill. We talked about access and transparency in the procurement process. There is also an integrity issue, an issue we are concerned about is bid-shopping, where the prime contractor will win the bid and then shop it. Where you think you are going to get the sub-contract, you are not going to get it. So there is an integrity issue here too because the same person that is bundled on Monday is going to be shopped on Tuesday, and the end result on Wednesday is that they have not gotten either job. So I think there is—if we are going to have a procurement process, it needs to have those elements if it is going to work for everybody.

Mr. DASILVA. Thank you.

Ron.

Mr. NEWLAN. Ron Newlan.

We will take advantage of the 14-day submission time and put our comments in writing with respect to S. 2466 and the Ombudsman bill, but just in summary say that we support both. We think they are very good bills. We think we could make a couple of small



improvements, and we will document it to you. The 30 percent we believe is good and should remain.

Senator Bond, I could not have asked for a better setup than he gave me as it relates to S. 1994. We are primarily concerned with the priority preference aspect, and that would be the aspect where a dual certified HUBZone and 8(a) firm gets a preference in a HUBZone competition or a 8(a) competition, and we are concerned that the tie breaker is if your bids are comparable. I have worked with both the Chairman's staff and the Ranking Member's staff, and we will submit in this same document our detailed thoughts on that. But I do not think, based on the conversations we have had, that we are far apart at all.

Mr. DASILVA. Thank you.

John.

Mr. TURNER. John Turner, Minority Business Legal Defense Fund.

On the topic of attainability of the 30-percent goal, it is my experience and the fund's experience that if you have the commitment of the agency, if you have substantive enforcement powers, and above all, talented personnel, it can indeed be done. There is a good friend, colleague of mine in the city of Dallas that oversaw the building of the Dallas Area Mass Transit Subway, Barton Burrell, he succeeded in getting—and I think my numbers may be a little off—but last I checked, something like 29 point something percent, women minority SDB participation in that massive project. With the American Airlines Center—which he oversaw the building of—he met and exceeded the goals which were substantive. So you had a very talented man, you had the support of the employer, and he had some enforcement powers, it can be done.

Mr. DASILVA. Thank you.

Ralph.

Mr. THOMAS. Yes. I want to reassert the importance, and I wish—speaking for myself, I wish the bill could be amended to include some portion about subcontracting by just 30 percent—with the Government, we are putting all of the responsibility on the Government and none on the prime contractors. The more we keep de-emphasizing subcontractors, we are de-emphasizing subcontracting, we are giving strength or energy to prime contractors not wanting to do anything. We are saying to the Federal Government that it is OK not to stress subcontracting, or not to follow up, or not to monitor, or not to make it important. It is a whole approach, it is not just the Government being responsible. Prime contractors have a responsibility as well. They are the ones getting the bulk of the money, and we cannot attack one without the other. We cannot measure one without the other.

Thank you.

Mr. DASILVA. Thank you. On that issue, first, I wanted to thank Steve for some comments that he had made before about the importance of prime contracting versus subcontracting. I think you are absolutely correct, subcontracting is important, but that relationship that a prime contractor builds with the Federal Government cannot be overemphasized. I think the Committee, throughout its history on procurement issues—and correct me if I am wrong, Cordell—has always stressed the relationship of prime con-

tracting as being of paramount importance to the Committee and paramount importance to small business. But on the subcontracting issue, I would like to point out that the Ombudsman legislation, in response to small businesses that have come to the Committee on subcontracting issues, saying that their prime contractor is not meeting their subcontracting plans and that the oversight of them is very very limited, specifically because the CMRs at SBA are essentially disappearing or being merged with the PCRs. It does call on the Ombudsman to monitor those subcontracting agreements, to take reports back when small businesses are not receiving their share of prime contracts when they were told that they would be getting those prime contracts, and the prime never contacts them again after they win.

But if anybody would like to add anything on the subcontracting and subcontracting agreements and oversight of that, I would be more than happy.

Mr. THOMAS. I just want to say that it is not just the responsibility of the SBA or any Ombudsman. It is the responsibility of the Federal agencies as well. A lot of prime contractors today, small businesses start off as subcontractors. I mean subcontracts can lead to prime contracts. As Joann said, they inter-relate a lot. Primes can be subs. It depends on the situation if a prime contract is better than a subcontract. But my point is, regardless of how we feel about that, to consistently de-emphasize subcontracting and say it is not important, we are falling—we cannot not talk about it on the one hand and then expect somebody to monitor it on the other. I know that we give a lot of attention to team agreements. We have a lot of classes on understanding team agreements and we teach them all over the country, and we are working with the aerospace industry's association to have general rules of fairness and principles of fair dealing, but it has to come from all ends. It is not a one-hand approach. It's like—just stressing prime contracts is just like having one arm with the other arm. They both inter-relate and one leads to the other, so I would hope that we would pay more attention to that in the future.

Mr. DASILVA. Thank you.

We are going to go to Joann, and then Hank, General Henry, and then Ron, and I am going to ask that by the time we have gone on to Hank, if you want to address any topic, to have your card up by then, because I am going to close it out after that.

So, Joann.

Ms. PAYNE. Just very quickly, I agree with Steve and of course with Ralph with the prime and the subcontracting, so do not get me wrong. But the reality is, the majority of women- and minority-owned businesses are in fact subcontractors, and that is why the subcontracting piece is so important to have money flow to woman and minority contractors.

Mr. DASILVA. Hank.

Mr. WILFONG. Hank Wilfong, NASDB. Jumping in on the subcontracting part, the reality of the way we are now is that the majority of the work from our association, the overwhelming majority of quality work is coming through subcontracting. Now, we can wish that we had the heyday in the 1970s and 1980s where small and disadvantaged businesses were getting a significant amount of con-

tracts from the Federal Government or we had PCRs, Ron, who would go out and help break out requirements that we could prime contract with. But the reality is that we have things like space stations, consolidated space operation contracts, Odin, et cetera, et cetera, joint strike fighter, that these are major kinds of already bundled, already consolidated contracts, and there will be more like them no matter what kind of language you put into law because economically it makes good sense. Falling back again to where I started off, part of the reason I wear my NASA pin so proudly and proud of my participation in the program over there, is because of the subcontracting part. Of course we have got good prime contracts, but overwhelmingly, our members have made a good substantial profit and firm development through subcontracting. So I join my friend Ralph by saying, why do we so de-emphasize subcontracting? Subcontracting is extremely important, and that is the point I think, Ralph, I am glad that you made, that the subcontracting part—and I did not realize, John, this law did not include subcontracts?

Mr. DASILVA. It does.

Mr. WILFONG. Oh, it does?

Mr. DASILVA. It does.

Mr. WILFONG. OK, thank you.

Mr. DASILVA. General Henry.

General HENRY. Thank you.

First, let me say how pleased I am to be here with you and thank you very much, you and the Senator, for asking.

Just a couple of comments around. I certainly agree with the comments of Mr. Thomas of NASA. I agree with him on the point of the subcontracting. As you may know, I spent many years in contract management. We had \$780 billion at one point, so I spent a lot of time studying the issue.

The first thing that I think that you should recognize is contracting officers really do not like mandatories. Any time that you get into it, there is a rebellion that exists for that. Contracting officers like to preserve the contracting officer's discretion. So when you impose either the social or economic provisions on a contracting officer, there is a natural tendency for him not to like it, so they are never going to like it.

That brings me to the point of the goal. I certainly support, as my friend here, I would like to see 40 percent for it, but I do not think that adding legislation a ratchet up on the goal is going to get you where you want to. I think that you have got to focus on the accountability. The issue to the prime contractors. Prime contractors are looking for the next job. If you embody into their present contract a responsibility to act a certain way and to give a certain performance, and failure to do that is a condition precedent on the next award, you have got the CEO's attention. If you embody it into that, you will have the contracting community.

I certainly agree with what I heard over here, debundle and disconnect the fact of the small business plans. That is kind of a feel-good approach that everybody does it, it goes on the shelf and nobody ever looks at it. The comment that the lady said was that let us take and find out what did you do. If you are a prime contractor and you are on the next major supersonic whatever it is,

what was your performance on this contract at the end of the day? Did you or did you not make it? For the next award or the following award it is going to be a critical, essential element for the award of that contract. You will get their attention.

Same thing holds true for the agency. When I was a senior acquisition executive I made a comment one time, what happens to me if I do not meet this award? The answer was, nothing. If you can turn that, to say to the guy that is in my position, that bad things are going to happen to you, you will get their attention. The agency has got to lead this issue because all those contracting officers are stretched thin. They have a position where they need to have some guidance. If the agency comes out and says that by September 30, regardless of what happens, you will meet this goal and you will produce that, then I think that you have a chance of being successful, and all that we have spoken to will come to pass. Thank you.

Mr. DASILVA. Ron.

Mr. NEWLAN. Ron Newlan.

There is an expression in sports, a tie is like kissing your sister. Well, a subcontract, in my opinion, is even less exciting than that. Many of you know that in the late 1970s I founded a small business and ran it for 20 years, and when I left that firm 4 years ago, it was the 54th largest Federal Government contractor. At that business, we spent 92 percent of our marketing dollars focused on being a prime. Eight percent of our marketing dollars, in any one year, we would chase subcontract opportunities. That is just one business's marketing strategy.

Administrator Styles, who represents what the President said, has said many times that the President wants to create an environment in which small businesses can flourish. If our role is to help small businesses flourish, it is to get them prime contract opportunities. If it is to keep them a small business and to put bread on their table and feed their family, then perhaps subcontracting business is good enough and appropriate, but if we want to flourish as a small business and ultimately become a big business, there is no substitute for being the prime. Thank you.

Mr. DASILVA. Thanks, Ron.

Pat.

Ms. PARKER. Patricia Parker.

You know, we talk about accountability and holding—and reports, and even the certification process. Well, what we are talking about is data, the ability to collect data, the ability to identify data, process it, get it back, make decisions quickly so this can go through. As we know with any good legislation, any good programs that come of that, resources, financial resources are needed to make that happen, and as we know, this is in scarce resources, we need to focus those resources. I think a lot of attention needs to be paid to putting resources towards technology to help us all work better and smarter. Thank you.

Mr. DASILVA. That is quite ominous.

[Laughter.]

Ms. PARKER. I am glad somebody agrees.

[Laughter.]

Ms. PARKER. But I mean because it is. If we want to hold primes accountable, we want to hold agencies accountable, then we do

need to report. They need to be able to have the data. There needs to be software programs that are out there. Small businesses go get a Small Business Innovative Research grant so that they can develop a technology that can help process all of this quickly so agencies can see those numbers and they can hold people accountable. Without that it is just pointing fingers and saying you did not do it, and coming up with numbers. So I think that using technology to help this process is going to be a big push in making all of this happen.

Mr. DASILVA. Thank you.

Michael.

Mr. ROBINSON. Michael Robinson.

Building on what General Henry said, I think that the way to incentive primes and agencies is to get this buy-in at the top. Without that buy-in this is not going to work. We have programs right now that are languishing, where we offer an awardee in the amount of 5 percent if companies will use Native American-owned firms in the Indian Incentive Act, and this program is not working. So financial incentives do not work. Report-onlys, which is what we have in DoD, is not working. We have an agency charged to find and report on the progress of the primes. DCMA, they do a wonderful job, but DoD is not making its goals.

So I think that buy-in at the top and holding primes accountable in past performance, and making those conditions for further awards, is a good incentive to move these programs forward.

Mr. DASILVA. Thank you.

With that, I am going to be closing out the Roundtable. Before I do, I would just like to again thank Senator Kerry's constituent, Michael Robinson from our PTAC, Morris Hudson, Senator Bond's constituent from their PTAC, Angela Styles, who just left a few minutes ago, but gave a tremendous amount of her time, as did Fred Armendariz.

With that I would like to thank all the participants for participating in this Roundtable discussion today. I remind you that the record will be open for 14 days. Please feel free to submit any comments on anything anybody said, any of the agenda items, and particularly the legislation.

And with that, thank you very much for coming. We are adjourned.

[Whereupon, at 11:27 a.m., the Roundtable was adjourned.]



## **A P P E N D I X**

Opening Statement of Senator John F. Kerry  
Chairman  
United States Senate Committee on  
Small Business and Entrepreneurship  
Committee Roundtable *"Are Government Purchasing Policies Hurting Small Business?"*  
June 19, 2002

Good morning everyone and thank you for coming to today's roundtable, titled *"Are Government Purchasing Policies Hurting Small Business?"*.

I believe most small business advocates have come to the conclusion that "so called" procurement reform in the early and mid-90s did not adequately protect the interests of small business.



Actions such as contract bundling, increased use of the GSA supply schedule and cut backs in procurement personnel, as well as limitations on certain procurement programs in response to the *Adarand* decision have had a devastating effect on small businesses and their ability to do business with the Federal government.

But more than that, I believe the entire procurement system has turned its back to some degree on small business

participation and that we need a major change of culture within procuring agencies to reverse the decline in small business participation in government procurement.

Until the Federal government, at all levels, realizes the importance of doing business with small business, these negative trends will continue, our nation will not have access to a wide range of small business suppliers and small businesses across the country will

continue to lose billions of dollars in opportunities year after year.

In your packets today should be a series of charts detailing Federal government achievement on small business prime contracting goals. You can see the news is not encouraging. Most striking is the government's failure, for the second year in a row, to meet the main small business prime contracting goal of 23 percent.

Equally troubling is the decline in 8(a) participation, and the near failure of the HUBZone and disabled veteran-owned small business procurement programs with respect to goal attainment, as well as the lack of any real increase in women-owned small business participation in government procurement.

I would also point out that the Administration's delay in implementing the provisions of the FY 2000 Small Business Reauthorization Act creating

the Women's Procurement Program played a key role in keeping women-owned small business out of the Federal marketplace last year. This delay is an issue I hope will receive attention from the participants today.

We have gathered here a diverse group of individuals with an extensive knowledge of government small business procurement programs.

From the policy side we have the Director of the Office of Federal Procurement Policy, Angela Styles, (who will be joining us a little later) and the SBA Associate Deputy Administrator for Government Contracting, Fred Armendariz, (Arm-en-dar-ez). From the program side, we have a number of representatives from small business procurement offices at several Federal agencies, as well as Procurement Technical Assistant Center representatives.

We also have a number of advocates and business owners who work with participants in the SBA's small business procurement programs.

It is my hope that today's discussion will be a thorough one, touching on what is and is not working in small business procurement. It is also my hope to receive your input on the legislation before the roundtable this morning, especially the draft of the "Small and Disadvantaged Business Ombudsman Act."

While no legislation alone can ever solve the complex problems faced by small businesses in today's Federal procurement environment, I believe the creation of an SDB Ombudsman at the SBA will put us firmly on the right track and address several procurement issues raised through program oversight and communication with small business owners.

For example, small businesses frequently contact my office to report problems they are having with a prime contractor or a



contracting agency. Too often, these businesses are afraid to come forward and make an official complaint for fear of being blackballed and denied future contracting opportunities. The SDB Ombudsman will provide one solution for these small businesses who fear being black listed, by allowing them to submit confidential complaints. The SDB Ombudsman will have the responsibility of tracking these complaint trends and reporting them to the committees on Small Business for oversight.

The SDB Ombudsman will also work to change the culture at Federal procuring agencies by tracking the training of procurement personnel and working to ensure that this training not only includes the “How to’s” of small business participation, but training on why small business participation is crucial to agency success and the national economy.

Of critical importance in the legislation is the first statutory consequence of an agency failing to meet its small business goals. Under the legislation, if an agency

fails to meet any small business goal, the agency would be required to submit a report and an action plan to the SDB Ombudsman detailing why the agency failed to meet its small business goal or goals, and what the agency intends to do to remedy the situation.

The SDB Ombudsman will also be responsible for tracking compliance with Section (k) of the Small Business Act, which stipulates that the Director of the Office of Small and Disadvantaged Business Utilization at each Federal

agency shall report to the Head or Deputy Head of the agency. Late last year, with the support of Ranking Member Bond, I sent a letter to twenty-one Federal agencies to gauge compliance with this provision. Using a very lenient standard of compliance, I have concluded that at least nine of the Federal agencies we surveyed are in violation of Section (k) of the Small Business Act. This is unacceptable. Later this week, I will be forwarding the survey results to the GAO so that it can perform a more detailed investigation.

One final note on the legislation is the inclusion of a provision to increase the governmentwide small business prime contracting procurement goal from 23 percent to 30 percent.

When I first made the suggestion that the small business procurement goal should be increased seven percentage points, my office received numerous calls, both in support of the increase and in opposition. By and large, those in opposition pointed to one fact: The Federal government has never achieved such a level of small

business procurement participation. And while that is true, no one said that it was impossible. Given the disappointing achievement of the Federal government on the current goal, I believe it is time to raise the bar.

When Congress enacted goals as part of the Small Business Act, the goals were intended to be a minimum standard of achievement. For too long, those goals have been treated as a target for attainment, not a minimum level of acceptable small business participation.

This too must change.

It is my hope that every group in support of small business and small businesses receiving a fair share of government procurement opportunities will get behind this legislation and the goal increase. Whether you're a HUBZone firm, a minority-owned small business, a veteran-owned small business, or a woman-owned small business, I hope you will realize that a rising tide raises all boats. Let us work on breaking the dam and raising the water level together.

I am not promising it will be easy, but it is worth doing.

Also to be discussed today are two other important pieces of legislation: S.1994, the “Combined 8(a) and HUBZone Priority Preference Act,” and S.2466, the “Small Business Federal Contractors Safeguard Act.” These bills should need no explanation to the group before us today. However, I will take a moment to stress their importance and my desire to receive your feedback with an eye towards making any necessary



improvements. It is my hope that all of these pieces of legislation will be enacted by the end of the 107<sup>th</sup> Congress.

Thank you once again for agreeing to participate in this discussion. I look forward to reviewing the comments made today.

## **Analysis of S. 1994, the “Combined 8(a) and HUBZone Priority Preference Act”**

### **Purpose**

Introduced by Senators John F. Kerry and Kit Bond on March 6, 2002, S. 1994, the “Combined 8(a) and HUBZone Priority Preference Act,” will establish a preference for the purposes of bidding on certain Federal procurement contracts for small business firms that have received both 8(a) Business Development (BD) and Historically Underutilized Business Zone (HUBZone) certification. The legislation will also establish a price-evaluation preference of up to 20 percent for firms with both 8(a)BD and HUBZone certification. Finally, the legislation raises the sole-source threshold for good and services contracts, as well as manufacturing contracts by \$1 million.

### **Establishment of Priority Preference**

The legislation establishes a priority preference for firms with both 8(a)BD and HUBZone certifications when bidding on certain Federal procurement contracts. The preference established by this legislation applies only to contracts awarded through the 8(a)BD and HUBZone programs under restricted competition. When a contract is to be awarded under restricted competition under either the 8(a)BD or HUBZone program, a firm with a certification for both programs will be awarded a contract over a firm that is only 8(a)BD certified or HUBZone certified if the bids are comparable. For example, if a contracting officer were to set aside a contract for restricted competition amongst HUBZone firms, and a HUBZone-certified firm bid \$100 while a dual-certified HUBZone-8(a)BD firm bid \$100, the firm with the dual certification would be awarded the contract.

### **Price Evaluation Preference**

Under the legislation, a firm that is dual-certified as an 8(a)BD and a HUBZone firm will receive both of the price-evaluation preferences available to them under each program in full and open competition. The effect of combining the price-evaluation preferences of these two programs results in a price-evaluation preference of up to 20 percent, when competing against large businesses, and a 10 percent price-evaluation preference when competing against a small business. For example, if a large business bids \$100 on a contract and would be the winning bidder, a firm that is both 8(a)BD and HUBZone certified would win the contract award with any bid up to \$120. If a small business bid \$110 on a contract, a firm that is both 8(a)BD certified and HUBZone certified would win the contract award with any bid up to \$110.

### **Sole-Source Threshold Increase**

The cap on the value of a contract that may be awarded to an 8(a)BD or a HUBZone firm under sole-source authority (without competition) is raised by \$1 million under the legislation, for both goods and services contracts and manufacturing contracts. The sole-source thresholds for each program would be \$4 million for goods and services contracts and \$6 million for manufacturing contracts.

107TH CONGRESS  
2D SESSION

# S. 1994

To establish a priority preference among certain small business concerns for purposes of Federal contracts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 2002

Mr. KERRY (for himself and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

---

## A BILL

To establish a priority preference among certain small business concerns for purposes of Federal contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combined 8(a) and  
5 HUBZone Priority Preference Act”.

### 6 **SEC. 2. DEFINITIONS.**

7 In this Act the following definitions shall apply:

8 (1) **CONTRACTING OFFICER.**—The term “con-  
9 tracting officer” has the same meaning as in section

1 27(f)(5) of the Office of Federal Procurement Policy  
2 Act (41 U.S.C. 423(f)(5)).

3 (2) 8(a) HUBZONE SMALL BUSINESS CON-  
4 CERN.—The term “8(a) HUBZone small business  
5 concern” means a qualified HUBZone small busi-  
6 ness concern that is also a section 8(a) small busi-  
7 ness concern.

8 (3) QUALIFIED HUBZONE SMALL BUSINESS  
9 CONCERN.—The term “qualified HUBZone small  
10 business concern” has the same meaning as in sec-  
11 tion 3(p)(5) of the Small Business Act (15 U.S.C.  
12 632(p)(5)).

13 (4) SECTION 8(a) SMALL BUSINESS CON-  
14 CERN.—The term “section 8(a) small business con-  
15 cern” means a small business concern that is cer-  
16 tified by the Small Business Administration as eligi-  
17 ble to receive benefits under section 8(a) of the  
18 Small Business Act (15 U.S.C. 637(a)).

19 (5) SMALL BUSINESS CONCERN.—The term  
20 “small business concern” has the same meaning as  
21 in section 3(a) of the Small Business Act (15 U.S.C.  
22 632(a)).

23 (6) SMALL BUSINESS CONCERN OWNED AND  
24 CONTROLLED BY SOCIALLY AND ECONOMICALLY DIS-  
25 ADVANTAGED INDIVIDUALS.—The term “small busi-

1      ness concern owned and controlled by socially and  
2      economically disadvantaged individuals” has the  
3      same meaning as in section 8(a)(4)(A) of the Small  
4      Business Act (15 U.S.C. 637(a)(4)(A)).

5   **SEC. 3. ESTABLISHMENT OF PRIORITY PREFERENCE.**

6      (a) EFFECT OF PRIORITY PREFERENCE ON RE-  
7    STRICTED COMPETITION CONTRACTS.—

8           (1) SECTION 8(a) CONTRACTS.—In determining  
9      the successful offeror for a restricted competition  
10     contract under section 8(a)(1)(D) of the Small Busi-  
11     ness Act (15 U.S.C. 637(a)(1)(D)), the contracting  
12     officer shall select an offer from an 8(a) HUBZone  
13     small business concern over a comparable offer from  
14     a section 8(a) small business concern that is not a  
15     qualified HUBZone small business concern.

16          (2) HUBZONE CONTRACTS.—In determining  
17     the successful offeror for a restricted competition  
18     contract under section 31(b)(2)(B) of the Small  
19     Business Act (15 U.S.C. 657a(b)(2)(B)), the con-  
20     tracting officer shall select an offer from an 8(a)  
21     HUBZone small business concern over a comparable  
22     offer from a qualified HUBZone small business con-  
23     cern that is not a section 8(a) small business con-  
24     cern.

1 (b) EFFECT OF PRIORITY PREFERENCE ON PRICE  
2 EVALUATION PREFERENCE.—

3 (1) IN GENERAL.—Subject to paragraphs (2)  
4 and (3), in any case in which a Federal procurement  
5 contract is to be awarded on the basis of full and  
6 open competition in accordance with section 303 of  
7 the Federal Property and Administrative Services  
8 Act of 1949 (41 U.S.C. 253), the price offered by  
9 an 8(a) HUBZone small business concern shall be  
10 deemed as being lower than the price offered by an-  
11 other offeror, if the price offered by the 8(a)  
12 HUBZone small business concern is not more than  
13 20 percent higher than the price offered by the oth-  
14 erwise lowest and responsive offeror.

15 (2) OTHER SMALL BUSINESS CONCERN.—If the  
16 competing offeror under paragraph (1) is a small  
17 business concern, the price evaluation preference  
18 given to the 8(a) HUBZone small business concern  
19 shall be 10 percent.

20 (3) RESPONSIVE OFFER.—An 8(a) HUBZone  
21 small business concern shall not receive a price eval-  
22 uation preference under this section if it does not  
23 make a responsive offer.

24 (c) EXCLUSION.—This section does not provide any  
25 priority preference to a small business concern owned and

1 controlled by socially and economically disadvantaged indi-  
2 viduals that is also a qualified HUBZone small business  
3 concern, unless such business has been certified by the  
4 Small Business Administration as eligible to receive bene-  
5 fits under section 8(a) of the Small Business Act (15  
6 U.S.C. 637(a)).

7 **SEC. 4. MODIFICATION OF SOLE SOURCE THRESHOLDS.**

8 (a) SECTION 8(a) SMALL BUSINESS CONCERN.—Sec-  
9 tion 8(a)(1)(D)(i)(II) of the Small Business Act (15  
10 U.S.C. 637(a)(1)(D)(i)(II)) is amended—

11 (1) by striking “\$5,000,000” and inserting  
12 “\$6,000,000”; and

13 (2) by striking “\$3,000,000” and inserting  
14 “\$4,000,000”.

15 (b) QUALIFIED HUBZONE SMALL BUSINESS CON-  
16 CERN.—Section 31(b)(2)(A)(ii) of the Small Business Act  
17 (15 U.S.C. 657a(b)(2)(A)(ii)) is amended—

18 (1) in subclause (I), by striking “\$5,000,000”  
19 and inserting “\$6,000,000”; and

20 (2) in subclause (II), by striking “\$3,000,000”  
21 and inserting “\$4,000,000”.

**Analysis of S. 2466, the  
“Small Business Federal Contractor Safeguard Act”**

**Purpose**

Introduced on May 7, 2002, by Senators Kerry, Bond, Carnahan and Collins, the purpose of S. 2466 is to strengthen the definition of a bundled contract, to close the loopholes in the existing definition, and to prevent Federal agencies from circumventing statutory safeguards intended to ensure that separate contracts are consolidated for economic reasons, not expediency.

**New Definition of a Bundled/Consolidated Contract**

Under the Small Business Federal Contractor Safeguard Act, the term bundled contract and its definition would be eliminated, and a new term, consolidated contract, and accompanying definition would take its place.

The term “consolidated contract” means a multiple award contract or a contract for goods or services with a Federal agency that:

- (A) combines discrete procurement requirements from not less than 2 existing contracts;
- (B) adds new, discrete procurement requirements to an existing contract; or
- (C) includes 2 or more discrete procurement requirements.

This definition eliminates the issue with the previous definition leaving room for interpretation by the Federal agencies and closes the loopholes in the current definition pertaining to new contract requirements and multiple award contracts.

**Procurement Strategies**

The procurement strategies section of the Small Business Act would now require a statement of benefits and a justification for any consolidated contract over \$2 million and a more extensive analysis, corresponding to current requirements for any consolidated contract, for consolidations over \$5 million.

**Consolidated Contracts over \$2 million**

In order to move forward with a consolidated contract over \$2 million, the agency must put forth the benefits anticipated from the consolidated contract, identify alternatives that would involve a lesser degree of consolidation and include a specific determination that the consolidation is necessary and justified. The determination that a consolidation is necessary and justified may be determined through administrative and personnel savings alone.

**Consolidated Contracts over \$5 million**

In order to move forward with a consolidated contract over \$5 million, an agency must, in addition to the above; conduct current market research to demonstrate that the consolidation will result in costs savings, quality improvements, reduction in acquisition times or better terms and conditions; include an assessment to the specific impediments to small business participation resulting from the consolidation; and specify actions designed to maximize small business participation as subcontractors and suppliers for the consolidated contract.

The determination that a consolidation is necessary and justified may not be determined through administrative and personnel savings alone, unless those savings will be substantial.

**Conforming Amendments**

The legislation also makes the necessary conforming amendments to the Small Business Reauthorization Act of 1997 and the Small Business Act, striking bundled contract and inserting consolidated contract where necessary.



107TH CONGRESS  
2D SESSION

# S. 2466

To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 7, 2002

Mr. KERRY (for himself, Mr. BOND, Mrs. CARNAHAN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

---

## A BILL

To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Fed-  
5 eral Contractor Safeguard Act”.

6 **SEC. 2. CONTRACT CONSOLIDATION.**

7 (a) DEFINITIONS.—Section 3(o) of the Small Busi-  
8 ness Act (15 U.S.C. 632(o)) is amended to read as follows:

9 “(o) DEFINITIONS.—In this Act the following defini-  
10 tions shall apply:

1           “(1) CONSOLIDATED CONTRACT; CONSOLIDA-  
2       TION.—The term ‘consolidated contract’ or ‘consoli-  
3       dation’ means a multiple award contract or a con-  
4       tract for goods or services with a Federal agency  
5       that—

6           “(A) combines discrete procurement re-  
7       quirements from not less than 2 existing con-  
8       tracts;

9           “(B) adds new, discrete procurement re-  
10      quirements to an existing contract; or

11          “(C) includes 2 or more discrete procure-  
12      ment requirements.

13          “(2) MULTIPLE AWARD CONTRACT.—The term  
14      ‘multiple award contract’ means—

15          “(A) a contract that is entered into by the  
16      Administrator of General Services under the  
17      multiple award schedule program referred to in  
18      section 2302(2)(C) of title 10, United States  
19      Code;

20          “(B) a multiple award task order contract  
21      or delivery order contract that is entered into  
22      under the authority of sections 2304a through  
23      2304d of title 10, United States Code, or sec-  
24      tions 303H through 303K of the Federal Prop-

1           erty and Administrative Services Act of 1949  
2           (41 U.S.C. 253h through 253k); and

3           “(C) any other indefinite delivery or indefi-  
4           nite quantity contract that is entered into by  
5           the head of a Federal agency with 2 or more  
6           sources pursuant to the same solicitation.”.

7       (b) PROCUREMENT STRATEGIES.—Section 15(e) of  
8 the Small Business Act (15 U.S.C. 644(e)) is amended  
9 to read as follows:

10       “(e) PROCUREMENT STRATEGIES; CONTRACT CON-  
11 SOLIDATION.—

12           “(1) IN GENERAL.—To the maximum extent  
13           practicable, procurement strategies used by the var-  
14           ious agencies having contracting authority shall fa-  
15           cilitate the maximum participation of small business  
16           concerns as—

17           “(A) prime contractors;

18           “(B) subcontractors; and

19           “(C) suppliers.

20       “(2) PROCUREMENT STRATEGY REQUIREMENTS  
21 WHEN THE VALUE OF A CONSOLIDATED CONTRACT  
22 IS GREATER THAN \$2,000,000.—

23           “(A) IN GENERAL.—An agency official  
24           may not execute a procurement strategy that  
25           includes a consolidated contract valued at more

1           than \$2,000,000 unless the proposed procure-  
2           ment strategy—

3                   “(i) specifically identifies the benefits  
4                   anticipated from consolidation;

5                   “(ii) identifies any alternative con-  
6                   tracting approaches that would involve a  
7                   lesser degree of contract consolidation; and

8                   “(iii) includes a specific determination  
9                   that the proposed consolidation is nec-  
10                  essary and the anticipated benefits of such  
11                  consolidation justify its use.

12               “(B) NECESSARY AND JUSTIFIED.—The  
13               head of an agency may determine that a pro-  
14               curement strategy under subparagraph (A)(iii)  
15               is necessary and justified if the monetary bene-  
16               fits of the procurement strategy, including ad-  
17               ministrative and personnel costs, substantially  
18               exceed the monetary benefits of each of the pos-  
19               sible alternative contracting approaches identi-  
20               fied under subparagraph (A)(ii).

21               “(C) ADDITIONAL REQUIREMENTS WHEN  
22               THE VALUE OF A CONSOLIDATED CONTRACT IS  
23               GREATER THAN \$5,000,000.—In addition to  
24               meeting the requirements under paragraph (A),  
25               a procurement strategy that includes a consoli-

1           dated contract valued at more than  
2           \$5,000,000—

3           “(i) shall be supported by current  
4           market research that demonstrates that  
5           the consolidated contract will result in—

6                       “(I) cost savings;

7                       “(II) quality improvements;

8                       “(III) reduction in acquisition  
9           cycle times; or

10                      “(IV) better terms and condi-  
11           tions;

12           “(ii) shall include an assessment of  
13           the specific impediments to participation  
14           by small business concerns as prime con-  
15           tractors that result from contract consoli-  
16           dation;

17           “(iii) shall specify actions designed to  
18           maximize small business participation as  
19           subcontractors, including suppliers, at var-  
20           ious tiers under the consolidated contract;  
21           and

22           “(iv) shall not be justified under para-  
23           graph (A)(iii) by savings in administrative  
24           or personnel costs, unless the total amount  
25           of the cost savings is expected to be sub-

1           stantial in relation to the total cost of the  
2           procurement.

3           “(3) CONTRACT TEAMING.—

4           “(A) IN GENERAL.—If the head of an  
5           agency solicits offers for a consolidated con-  
6           tract, a small business concern may submit an  
7           offer that provides for the use of a particular  
8           team of subcontractors for the performance of  
9           the contract (referred to in this paragraph as  
10          ‘teaming’).

11          “(B) EVALUATION OF OFFER.—The head  
12          of the agency shall evaluate an offer submitted  
13          by a small business concern under subpara-  
14          graph (A) in the same manner as other offers,  
15          with due consideration to the capabilities of all  
16          of the proposed subcontractors.

17          “(C) NO EFFECT ON STATUS AS A SMALL  
18          BUSINESS CONCERN.—If a small business con-  
19          cern engages in teaming under subparagraph  
20          (A), its status as a small business concern shall  
21          not be affected for any other purpose.”.

22          (c) CONFORMING AMENDMENTS.—

23               (1) CONFORMING AMENDMENT TO THE SMALL  
24          BUSINESS REAUTHORIZATION ACT OF 1997.—Section

1     414 of the Small Business Reauthorization Act of  
2     1997 (41 U.S.C. 405 note) is repealed.

3             (2) CONFORMING AMENDMENTS TO THE SMALL  
4     BUSINESS ACT.—The Small Business Act (15 U.S.C.  
5     631 et seq.) is amended—

6             (A) in section 2(j)—

7                 (i) by striking the subsection heading  
8                 and inserting the following:

9                 “(j) CONTRACT CONSOLIDATION.—”; and

10                (ii) in paragraph (3), by striking  
11                “bundling of contract requirements” and  
12                inserting “contract consolidation”;

13             (B) in section 8(d)(4)(G), by striking “a  
14     bundled contract” and inserting “a consolidated  
15     contract”;

16             (C) in section 15(a)—

17                 (i) by striking “bundling of contract  
18                 requirements” and inserting “contract con-  
19                 solidation”; and

20                 (ii) by striking “the bundled contract”  
21                 and inserting “the consolidated contract”;  
22                 and

23             (D) in section 15(k)(5)—

24                 (i) by striking “significant bundling of  
25     contract requirements” and inserting “con-

1           solidated contracts valued at more than  
2           \$2,000,000”; and  
3           (ii) by striking “bundled contract”  
4           and inserting “consolidated contract”.



## **Analysis of the Discussion Draft of the “Small and Disadvantaged Business Ombudsman Act”**

### **Purpose**

The “Small and Disadvantaged Business Ombudsman Act,” will establish a Small and Disadvantaged Business Ombudsman for Procurement (SDB Ombudsman) at the U.S. Small Business Administration (SBA). The legislation will also raise the Federal governmentwide procurement goal for small business prime contracting by 7 percentage points, setting the governmentwide goal at 30 percent. By raising this goal, the Federal government will increase opportunities for all small businesses.

### **Role of the SDB Ombudsman**

The SDB Ombudsman will be responsible for ensuring small businesses are treated fairly in the procurement process. The SDB Ombudsman will serve as a focal point within the Federal government to track and report on complaints received from small business firms regarding their treatment by Federal procuring agencies and non-small business prime contractors.

### **Responsibilities of the SDB Ombudsman**

The SDB Ombudsman shall annually report to Congress on: each Federal agency’s success or failure in meeting its small business goals and, if a major Federal agency fails to meet a small business goal, on the Federal agency’s explanation of why it failed to achieve its goal and its action plan to meet future goals; the treatment of small businesses by all Federal agencies and non-small business prime contractors; the training of contracting personnel at major Federal agencies to ensure knowledge of small business procurement programs and their importance to the Federal government and the economy; each major Federal agency’s outreach activities to small business contractors; each Federal agency’s compliance with the Small Business Act’s provision establishing an Office of Small and Disadvantaged Business Utilization (OSDBU) at each agency; and any discrimination faced by small businesses based on the social or economic status of their owner(s).

### **Confidentiality Clause**

The SDB Ombudsman must hold all information that could potentially expose a small business to retaliation from the Federal government or a non-small business prime contractor as confidential, unless a written waiver is obtained. The confidentiality clause extends to information received by any OSDBU employee that could expose the employee to retaliation from a Federal agency.

### **Agency Coordination with the SDB Ombudsman:**

The legislation requires each Federal agency’s OSDBU to cooperate with the SDB Ombudsman so that he or she may carry out his or her official responsibilities. Nothing in the Act is intended to replace or diminish the role of the OSDBUs at each Federal agency.

### **Goal Attainment Plan**

The legislation requires each major Federal agency that fails to meet a small business goal to submit a report to the SDB Ombudsman as to why the agency failed to achieve a goal and a plan for attaining future goals.

### **Increase in the Governmentwide Goal**

The legislation increases the Federal government’s statutory governmentwide procurement goal for small business prime contracting by 7 percentage points. The new governmentwide goal would be 30 percent.

### **Major Federal Agencies**

A major Federal agency for purposes of the additional reporting requirements means an agency that has procured over \$200 million in goods and services in the previous fiscal year.

107TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

## A BILL

To provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small and Disadvan-  
5 tagged Business Ombudsman Act”.

6 **SEC. 2. PROCUREMENT OVERSIGHT.**

7 (a) SBA SMALL AND DISADVANTAGED BUSINESS  
8 OMBUDSMAN FOR PROCUREMENT.—Section 30 of the  
9 Small Business Act (15 U.S.C. 657) is amended—

10 (1) in subsection (a)—

2

1 (A) in paragraph (1), by striking “and”;

2 (B) in paragraph (2), by striking the pe-  
3 riod and adding a semicolon; and

4 (C) by adding at the end the following:

5 “(3) ‘SDB Ombudsman’ means the Small and  
6 Disadvantaged Business Ombudsman for Procure-  
7 ment, designated under subsection (e); and

8 “(4) ‘Major Federal agency’ means an agency  
9 of the United States Government that, in the pre-  
10 vious fiscal year, entered into contracts with non-  
11 Federal entities to provide the agency with a total  
12 of not less than \$200,000,000 in goods or services.”;  
13 and

14 (2) by adding at the end the following:

15 “(e) SBA SMALL AND DISADVANTAGED BUSINESS  
16 OMBUDSMAN FOR PROCUREMENT.—

17 “(1) APPOINTMENT.—

18 “(A) IN GENERAL.—Not later than 180  
19 days after the date of enactment of the Small  
20 and Disadvantaged Business Ombudsman Act,  
21 the Administrator shall designate a Small and  
22 Disadvantaged Business Ombudsman for Pro-  
23 curement (referred to in this section as the  
24 ‘SDB Ombudsman’).

## 3

1           “(B) INTRAAGENCY RECRUITMENT.—The  
2           SDB Ombudsman shall be designated from  
3           among employees of the Administration, to the  
4           extent practicable.

5           “(C) LINE OF AUTHORITY.—The SDB  
6           Ombudsman shall report directly to the Admin-  
7           istrator.

8           “(2) DUTIES.—The SDB Ombudsman shall—

9           “(A) work with each Federal agency with  
10          procurement authority to ensure that small  
11          business concerns are treated fairly in the pro-  
12          curement process; and

13          “(B) establish a procedure for receiving  
14          comments from small business concerns and the  
15          Office of Small and Disadvantaged Business  
16          Utilization of each Federal agency regarding  
17          the activities of agencies and prime contractors  
18          that are not small business concerns on Federal  
19          procurement contracts.

20          “(3) ANNUAL REPORT.—

21          “(A) IN GENERAL.—No later than 1 year  
22          after the date of enactment of this subsection,  
23          and annually thereafter, the SDB Ombudsman  
24          shall provide a report to the Committee on  
25          Small Business of the House of Representatives

1 and the Committee on Small Business and En-  
2 trepreneurship of the Senate.

3 “(B) CONTENTS.—The report required  
4 under subparagraph (A) shall contain—

5 “(i) information from the Federal  
6 Procurement Data System pertaining to  
7 contracting and subcontracting goals of the  
8 Federal government and each Federal  
9 agency with procurement authority;

10 “(ii) a copy of the report submitted to  
11 the SDB Ombudsman by each major Fed-  
12 eral agency and an evaluation of the goal  
13 attainment plans submitted to the SDB  
14 Ombudsman pursuant to paragraph (5);

15 “(iii) an evaluation of the success or  
16 failure of each major Federal agency in at-  
17 taining its small business procurement  
18 goals, including a ranking by agency on  
19 the attainment of such goals;

20 “(iv) a summary of the efforts of each  
21 major Federal agency to promote con-  
22 tracting opportunities for small business  
23 concerns by—

24 “(I) educating and training pro-  
25 curement officers on the importance

5

1 of small business concerns to the  
2 economy and to Federal contracting;  
3 and

4 “(II) conducting outreach initia-  
5 tives to promote prime and subcon-  
6 tracting opportunities for small busi-  
7 ness concerns;

8 “(v) an assessment of the knowledge  
9 of the procurement staff of each major  
10 Federal agency concerning programs that  
11 promote small business contracting;

12 “(vi) substantiated comments received  
13 from small business concerns and the Of-  
14 fice of Small and Disadvantaged Business  
15 Utilization of each Federal agency regard-  
16 ing the treatment of small business con-  
17 cerns by Federal agencies and prime con-  
18 tractors (that are not small business con-  
19 cerns) on Federal procurement contracts;

20 “(vii) an analysis of the responsive-  
21 ness of each Federal agency to small busi-  
22 ness concerns with respect to Federal con-  
23 tracting and subcontracting;

24 “(viii) an assessment of the compli-  
25 ance of each Federal agency with section

## 6

1 15(k) of the Small Business Act (15  
2 U.S.C. 644(k); and

3 “(ix) a description of any discrimina-  
4 tion faced by small business concerns  
5 based on the gender or the social or eco-  
6 nomic status of their owners.

7 “(C) NOTICE AND COMMENT.—

8 “(i) IN GENERAL.—The SDB Om-  
9 budsman shall provide notice to each Fed-  
10 eral agency and prime contractor (that is  
11 not a small business concern) identified in  
12 the report prepared under subparagraph  
13 (A) that such agency or contractor has 60  
14 days to submit comments on the draft re-  
15 port to the SDB Ombudsman before the  
16 final report is submitted to Congress under  
17 subparagraph (A).

18 “(ii) INCLUSION OF OUTSIDE COM-  
19 MENTS.—

20 “(I) IN GENERAL.—The final re-  
21 port prepared under this paragraph  
22 shall contain a section in which Fed-  
23 eral agencies and prime contractors  
24 (that are not small business concerns)  
25 are given an opportunity to respond to

## 7

1 the report contents with which they  
2 disagree.

3 “(II) NO RESPONSE.—If no re-  
4 sponse is received during the 60-day  
5 comment period from a particular  
6 agency or contractor identified in the  
7 report, the final report under this  
8 paragraph shall indicate that the  
9 agency or contractor was afforded an  
10 opportunity to comment.

11 “(D) CONFIDENTIALITY.—In preparing  
12 the report under this paragraph, the SDB Om-  
13 budsman shall keep confidential all information  
14 that may expose a small business concern or  
15 Office of Small and Disadvantaged Business  
16 Utilization to possible retaliation from the agen-  
17 cy or prime contractor identified by the small  
18 business concern, unless the small business con-  
19 cern or Office of Small and Disadvantaged  
20 Business Utilization consents in writing to the  
21 release of such information.

22 “(4) INTERAGENCY COORDINATION.—Each  
23 Federal agency, through its Office of Small and Dis-  
24 advantaged Business Utilization, shall assist the  
25 SDB Ombudsman and the Administrator of the Of-



1        fice of Federal Procurement Policy to ensure compli-  
2        ance with—  
3                “(A) the Federal procurement goals estab-  
4                lished pursuant to section 15(g);  
5                “(B) the procurement policy outlined in  
6                section 8(d), which states that small business  
7                concerns should be given the maximum prac-  
8                ticable opportunity to participate in Federal  
9                contracts;  
10               “(C) Federal prime contractors small busi-  
11               ness subcontracting plans negotiated under sec-  
12               tion 8(d)(4)(B);  
13               “(D) the responsibilities outlined under  
14               section 15(k); and  
15               “(E) any other provision of this Act.  
16               “(5) GOAL ATTAINMENT PLAN.—If a major  
17        Federal agency fails to meet any small business pro-  
18        curement goal under this Act in any fiscal year, such  
19        agency shall submit a goal attainment plan to the  
20        SDB Ombudsman not later than 90 days after the  
21        end of the fiscal year in which the goal was not met,  
22        containing—  
23               “(A) a description of the circumstances  
24               that contributed to the failure of the agency to  
25               reach its small business procurement goals; and

1 “(B) a detailed plan for meeting the small  
2 business procurement goals in the fiscal year  
3 immediately following the fiscal year in which  
4 the goal was not met.

5 “(6) EFFECT ON OTHER OFFICES.—Nothing in  
6 this section is intended to replace or diminish the ac-  
7 tivities of the Office of Small and Disadvantaged  
8 Business Utilization or any similar office in any  
9 Federal agency.

10 “(7) ADMINISTRATIVE RESOURCES.—To enable  
11 the SDB Ombudsman to carry out the duties re-  
12 quired by this subsection, the Administrator shall  
13 provide the SDB Ombudsman with sufficient—

14 “(A) personnel;

15 “(B) office space; and

16 “(C) dedicated financial resources, which  
17 are specifically identified in the annual budget  
18 request of the Administration.”.

19 **SEC. 3. GOVERNMENT-WIDE SMALL BUSINESS GOAL.**

20 Section 15(g)(1) of the Small Business Act (15  
21 U.S.C. 644(g)(1)) is amended in the second sentence, by  
22 striking “23 percent” and inserting “30 percent”.

JOHN F. KERRY, MASSACHUSETTS, CHAIRMAN  
CHRISTOPHER S. BOND, MISSOURI, RANKING MEMBER

ARI LEVIN, MICHIGAN  
OM HARKIN, IOWA  
OSCAR A. RUBENMAN, CONNECTICUT  
ALB. D. WELLSTONE, MINNESOTA  
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PATRICK R. FORBES, MAJOR F. STAFF DIRECTOR AND CHIEF COUNSEL  
EMILIA OSAGHO, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP  
WASHINGTON, DC 20510-6350

November 28, 2001

Dear \_\_\_\_\_,

We are writing to express our concern over reports that some Federal agencies are failing to comply with Section 15(k) of the Small Business Act.

Section 15(k) requires the creation of an Office of Small and Disadvantaged Business Utilization (OSDBU) at each Federal agency. This law further mandates that the head of each agency appoint a Director of Small and Disadvantaged Business Utilization who shall be "responsible only to, and report directly to, the head of such agency or to the deputy of such head," with an exception for the Department of Defense (15 USC 644(k)(3)).

The legislation creating the OSDBU at each agency stated this quite clearly to ensure that small business concerns were addressed at the highest levels. Because taking the time and effort to ensure small business participation is always challenging for overworked contracting officers, an OSDBU provides crucial technical support. Contracting officers must know that the OSDBU has the support of, and direct access to, the agency head. Experience has taught that maintaining this relationship is often a deciding factor in the success or failure of an agency's small business program.

Information received by the U.S. Senate Committee on Small Business and Entrepreneurship has led us to believe that some Federal agencies may not be in compliance with 15 USC 644(k)(3) because they have placed the Director in a position where he or she does not report directly to the head or deputy head of the agency. Additionally, some agencies have sought to provide bifurcated reporting relationships, such as requiring OSDBUs to report to a lower level agency person for budgetary or administrative matters, an arrangement not authorized by the Small Business Act. Therefore, we request that you supply the Committee with an explanation of where in your agency the OSDBU Director's position has been placed and to whom the Director reports on a daily basis. If the OSDBU Director reports to more than one person for different purposes (such as budgetary or administrative matters), please specify each person and the purpose of that reporting relationship. Because of the urgent nature of this request, we expect to receive your written response no later than December 17, 2001.

Thank you for your attention to this matter. Please feel free to contact John DaSilva with Chairman Kerry or Cordell Smith with Ranking Member Bond at (202) 224-5175 should you have any questions. We look forward to your response.

  
John F. Kerry  
Chairman

Sincerely,

  
Kit Bond  
Ranking Member

JOHN F. KERRY, MASSACHUSETTS, CHAIRMAN  
CHRISTOPHER B. BOND, MISSOURI, RANKING MEMBER

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MARY LANDRIEU, LOUISIANA	MIKE CRAPO, IDAHO
JOHN EDWARDS, NORTH CAROLINA	GEORGE ALLEN, VIRGINIA
MARIA CANTWELL, WASHINGTON	JOHN ENSIGN, NEVADA
JEAN CARNAHAN, MISSOURI	

PATRICIA R. FORBES, MAJORITY STAFF DIRECTOR AND CHIEF COUNSEL  
EMILIA DISANTO, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP  
WASHINGTON, DC 20510-6350

April 12, 2002

The Honorable Hector Barreto  
Administrator  
U.S. Small Business Administration  
409 3rd Street, S.W.  
Washington, D.C. 20416

Dear Administrator Barreto:

We are writing to urge the Small Business Administration (SBA) to revisit the issue of set-asides for Small Disadvantaged Businesses (SDBs).

The Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* (*Adarand*) resulted in a revamping of Federal programs designed to assist minorities. One affected program was the government's SDB program, which was intended to help socially and economically disadvantaged small businesses overcome the social and economic constraints they face when doing business with the Federal government. In response to the *Adarand* ruling's "strict scrutiny" test, under which minority programs must be narrowly tailored to serve a compelling governmental interest, the statute and regulations establishing the civilian agency set-aside for SDBs were suspended. A comparable suspension applied to the statutory and regulatory provisions establishing SDB set-asides at the Department of Defense. When the SDB set-aside was suspended, it was with the understanding that, if SDB participation in Federal contracting declined, the issue would be revisited. In addition, the Department of Commerce was to study the suspension of the SDB set-aside program and report on its impact. To date, the Commerce Department has not completed this study.

Since implementation of the post-*Adarand* rule suspending the SDB set-aside, the percentage of major Federal agencies' contract dollars awarded to non-8(a) SDB firms has declined 32 percent. Although the Commerce Department has not yet fulfilled its commitment to review the SDB set-aside issue, it appears that, given the sharp decline in Federal contracts being awarded to non-8(a) SDBs, the time may have come to end the moratorium on set-asides. Suspending the set-aside, combined with other changes in acquisition practice, has made achievement of the government's SDB goals increasingly difficult. For example, the use of best value criteria to make contracting awards has substantially limited the benefits of the price evaluation preference available to SDB firms competing for Federal government contracts.

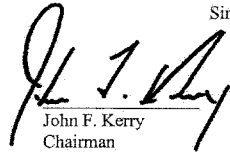
Accordingly, we would value hearing the SBA's opinion on re-establishing this important tool for the development and growth of socially and economically disadvantaged small

Pg. 2  
The Honorable Hector Barreto  
April 12, 2002

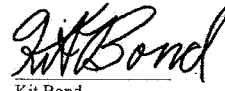
businesses. Due to the critical nature of this request, a response by April 30, 2002, would be appreciated.

Thank you for your attention to this important matter. Please feel free to contact us, or have your staff contact John DaSilva of Chairman Kerry's staff or Cordell Smith of Ranking Member Bond's staff at (202) 224-5175.

Sincerely,



John F. Kerry  
Chairman



Kit Bond  
Ranking Member



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

MAY 16 2002

OFFICE OF THE ADMINISTRATOR

The Honorable John F. Kerry  
Chairman, Committee on Small Business  
and Entrepreneurship  
United States Senate  
Washington, DC 20510

Dear Senator Kerry:

This is in response to your letter of April 12, 2002, regarding Small Disadvantaged Businesses (SDB) set-asides. We are sorry for the delay in responding, but we wanted to ensure that the Federal Procurement Data Center (FPDC) statistics we have are accurate and current. SDB contracting dollars have risen from \$12.5 billion in FY 1995 to \$15.6 billion in FY 2001. Specifically, non-8(a) SDB Federal procurement dollars rose from \$4.8 billion in FY 1995 to \$9.4 billion in FY 2001. Consequently, we believe that SDB set-asides are unnecessary.

In addition, SDB set-asides have come under increasing legal challenge, most recently in the Federal Circuit case of *Rothe Development Corp. v. Department of Defense*. This adds to the concerns of using set-asides for SDB awards.

As you are aware, the President recently announced his small business agenda where he singled out the continuing problem of contract bundling as a major focus of his efforts to ensure that small businesses have access to Federal procurement dollars. He directed the Office of Management and Budget to develop a Federal government strategy for unbundling contracts wherever practicable. All small businesses will benefit from this policy.

As always, thank you for your leadership and efforts on behalf of small business. I look forward to the continued opportunity to work with you and the Committee.

Sincerely,

Hector V. Barreto  
Administrator

cc: The Honorable Christopher Bond

JOHN F. KERRY, MASSACHUSETTS, CHAIRMAN  
 CHRISTOPHER S. BOND, MISSOURI, RANKING MEMBER

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 EMILIA DISANTO, REPUBLICAN STAFF DIRECTOR

**United States Senate**  
 COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP  
 WASHINGTON, DC 20510-6350

February 14, 2002

The Honorable Hector Barreto  
 Administrator  
 U.S. Small Business Administration  
 409 3rd Street, S.W.  
 Washington, D.C. 20416

Dear Administrator Barreto:

I am writing to express my concern over issues of increasing importance to the Small Business Administration's (SBA) 8(a) Business Development (BD) and Small Disadvantaged Business (SDB) communities. Specifically, these communities have contacted my office concerned about program application and certification.

Since I took over the Chairmanship of the U.S. Senate Committee on Small Business and Entrepreneurship, I have been alarmed at the increasing complaints about the lengthy delay in the certification process for the 8(a)BD program and the SDB program. I have also received a number of complaints about the burdensome application forms required for certification as well as the continuing lack of an online application process.

While I am aware that the Office of Management and Budget (OMB) had harsh words for the HUBZone certification process in the Administration's Fiscal Year 2003 budget proposal, I disagree with the OMB's assessment. It appears to me as if the OMB reported on the wrong program and meant instead to illustrate the issues surrounding the 8(a)BD and SDB application and certification process. In fact, the SBA HUBZone application process has been touted as a "gold standard" that the SBA should use as a model in any re-design of the application and certification process for other programs. While I am a supporter of the HUBZone program, I find the unequal treatment the SBA provides the 8(a)BD and SDB programs with respect to electronic access to the application and certification process alarming, especially since the HUBZone program is only about five years old, while the 8(a)BD and SDB programs are well-established.

Because of my support for the 8(a)BD program and the SDB program, as well as my oversight role over these programs, I feel it is critical to address these issues in a prompt manner. It would be helpful to me if you would provide answers to the following questions:

- 1) What is the average number of applications the SBA receives in a week for 8(a)BD certification? What is the weekly average for SDB applications? What is the weekly average for HUBZone applications?
- 2) What is the length of time the SBA tells an applicant it generally takes to receive 8(a)BD certification? What is the time for SDBs? What is the time for HUBZones?

Page 2  
The Honorable Hector Barreto  
February 14, 2002

3) How long does it take, on average, for a small business concern to receive 8(a)BD certification once an application is submitted? What is the average time to receive SDB certification? What is the average time to receive HUBZone certification?

4) How many 8(a)BD certifications does the SBA complete in a week? How many SDB certifications? How many HUBZone certifications?

5) How many Full Time Equivalents (FTEs) does the SBA have assigned to perform 8(a)BD certifications? How many FTEs for SDB certifications? How many for HUBZone certifications?

6) What are the methods available for applying for 8(a)BD certification? What are the methods for SDB certification? What are the methods for HUBZone certification?

7) How long does the SBA estimate it should take to complete the 8(a)BD application? How long for the SDB application? How long for the HUBZone application?

8) Do you have any plans to improve the SBA's application and certification process for either the 8(a)BD or SDB programs? If so, please explain what they are and the time frame for implementing them.

9) Do you agree with the OMB assessment that the HUBZone application process is a "major barrier to small business participation" in the program? If so, do you have plans to improve the HUBZone application and certification process? And if so, what is the time frame for implementing these plans.

Thank you in advance for your cooperation in this matter. It would be helpful if you would provide answers to these questions by close of business Monday, February 25, 2002, so that the Committee may consider them before the budget hearing scheduled for February 27, 2002.

I look forward to working with you as we seek ways to improve participation and use of the 8(a)BD and SDB programs. Please feel free to contact me, or have your staff contact John DaSilva of my Committee staff at (202) 224-5175, should you have any questions about this request.

Sincerely,  
  
John F. Kerry  
Chairman

cc: Fred G. Armendariz, Associate Deputy Administrator  
Della Ford, Associate Administrator  
Michael McHale, Associate Administrator





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAR 14 2002

The Honorable John F. Kerry  
Chairman, Committee on Small Business  
and Entrepreneurship  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of February 14, 2002, requesting information concerning the application and certification processes for the 8(a) Business Development (BD), HUBZone, and Small Disadvantaged Business (SDB) programs. We appreciate the opportunity to answer the following questions and address your concerns:

1. What is the average number of applications the SBA receives in a week for the 8(a) BD, SDB, and HUBZone programs?

8(a) BD - 64                      SDB - 22                      HUBZone - 90

2. What is the length of time the SBA tells an applicant it generally takes to receive 8(a) BD, SDB, and HUBZone certifications?

8(a) BD - 65 days                      SDB - 75 days                      HUBZone - 30 days

3. How long does it take, on average, for a small business concern to receive 8(a) BD, SDB, and HUBZone certifications once an application is submitted?

8(a) BD - 62 days                      SDB - 114 days                      HUBZone - 23 days

We recognize that the average processing time for SDB applications is unacceptable. I have asked Mr. Fred Armendariz, Associate Deputy Administrator for Government Contracting and Business Development, to investigate this matter and to identify opportunities to improve the process as quickly as possible.

4. How many 8(a) BD, SDB, and HUBZone certifications does the SBA complete in a week?

8(a) BD - 30<sup>1</sup>                      SDB - 12                      HUBZone - 60

5. How many Full Time Equivalents (FTEs) does the SBA have assigned to perform 8(a) BD, SDB, and HUBZone certifications?

8(a) BD - 11                      SDB - 11                      HUBZone - 5

6. What are the methods available for applying for 8(a) BD, SDB, and HUBZone certifications?

The first step in applying to participate in the 8(a) BD program is contacting the local U.S. Small Business Administration (SBA) district office serving the geographic area in which the headquarters of the applicant concern is located. These offices provide direct assistance and conduct 8(a) BD program orientation workshops to provide in-depth information regarding program eligibility requirements and to review the required application forms. Potential applicants can also receive assistance through SBA's resource partners, e.g., Small Business Development Centers, Women Business Centers, the Service Corps of Retired Executives, etc. Program application forms are downloadable from SBA's Internet website ([www.sba.gov/library/forms.html](http://www.sba.gov/library/forms.html)) and are also available in hardcopy through local district offices.

Like the 8(a) BD program, companies interested in applying to participate in the SDB program should first contact the local SBA district office where they can receive pertinent information regarding program benefits, eligibility requirements and completion of the application forms. The application forms are downloadable from SBA's Internet website and are available in hardcopy through SBA district offices. Applications to participate in the SDB program are forwarded to SBA's Headquarters in Washington, DC for processing.

To apply to participate in the HUBZone program, companies are encouraged to use the electronic application on the HUBZone Internet website. Paper application is available and can be downloaded from the website or obtained from any local SBA district office before submitting it to SBA Headquarters in Washington, DC. Complete electronic applications are transmitted to SBA's Headquarters for processing.

<sup>1</sup> Does not include an additional 30 that are reviewed and returned to the applicant as incomplete

7. How long does the SBA estimate it should take to complete the 8(a) BD, SDB, and HUBZone applications?

*8(a) BD* – 4 hours                      *SDB* – 4 hours                      *HUBZone* – 1.5 hours

8. Do you have plans to improve the SBA's application and certification process for either the 8(a) BD or SDB programs? If so, please explain what they are and the time frame for implementing them.

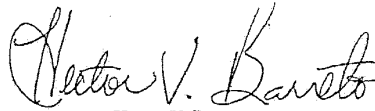
SBA has already taken steps to improve the 8(a) BD and SDB application and certification processes. SBA recently introduced a combined 8(a) BD and SDB program application that is available on its website. We currently have a task force that is working to develop a streamlined electronic version of this application. When implemented, application submission and processing will be handled electronically. We anticipate introducing this vehicle within the next 15 to 18 months. In addition, we are currently reviewing 8(a) BD and SDB program eligibility and application requirements to identify potential streamlining opportunities.

9. Do you agree with the OMB assessment that the HUBZone application process is a "major barrier to small business participation" in the program? If so, do you have plans to improve the HUBZone application and certification process? And if so, what is the time frame for implementing these plans?

OMB was actually quoting a recent study by the General Accounting Office. The HUBZone application process is in fact a simple to use web-based electronic information delivery system that allows firms to easily learn about, apply, and be certified for program participation. Thus far, this system has proven to be an efficient and effective tool and we plan to use it as a model in our efforts to improve the 8(a) BD and SDB certification processes.

Thank you for your interest in this matter and small business. Please feel free to contact Fred Armendariz, Associate Deputy Administrator for Government Contracting and Business Development, at (202) 205-6459, if you have further questions.

Sincerely,



Hector V. Barreto  
Administrator

**OPENING STATEMENT OF FRED ARMENDARIZ  
ASSOCIATE DEPUTY ADMINISTRATOR  
GOVERNMENT CONTRACT AND BUSINESS DEVELOPMENT  
SENATE SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE  
PROCUREMENT ROUNDTABLE  
JUNE 19, 2002**

Thank you. I am Fred Armendariz, Associate Deputy Administrator for Government Contracting and Business Development at the U.S. Small Business Administration (SBA).

I am pleased to be here today representing the Administrator and having the opportunity to discuss the SBA and the President's Small Business Agenda.

The Administrator is committed to representing small business men and women as an effective and efficient 21<sup>st</sup> century national organization that focuses on **simplification, innovation, and dedication**, in order to create a climate in which entrepreneurship can be both encouraged and sustained.

A climate that utilizes the best business practices of the marketplace to ensure that small business has a maximum opportunity to compete for available procurement dollars.

We are working towards this goal by simplifying the point of entry to our programs through e-capable applications.

Once we enroll a larger segment of the small business community into our programs, we are developing innovative training programs to give small businesses the tools that they need to work successfully with large primes and federal agencies.

Finally, we are dedicated to being proactive in delivering procurement opportunities to the small business community. One innovative program recently

launched is our national matchmaking program that delivers procurement opportunities directly to small business, and at the same time value and innovation to prime contractors, federal agencies, and ultimately the US taxpayer.

Mr. Chairman and Ranking Member, I thank you for this opportunity and look forward to today's forum and discussion. Thank you.

Attachment 1

FEDERAL PROCUREMENT DATA SYSTEM  
**REPORT ON ANNUAL PROCUREMENT PREFERENCE GOALING ACHIEVEMENTS**  
 Actions Reported on SF279 and SF281 By Agency  
 Fiscal Year 2001 Through Fourth Quarter

	SB ACTS	SB (\$000)	SB (%)	SDB ACTS	SDB (\$000)	SDB (%)	RA ACTS	RA (\$000)	RA (%)	NON-SB ACTS	NON-SB (\$000)	NON-SB (%)	NON-RA ACTS	NON-RA (\$000)	NON-RA (%)
TOTAL FEDERAL	5,035,368	50,688,925	22.81	250,143	15,630,127	7.12	62,726	6,275,156	2.88	196,417	5,350,971	4.28			
OFFICE OF THE PRESIDENT	2,811	19,562	58.91	416	11,357	34.20	27	4,562	13.74	389	6,795	20.46			
AGRICULTURE	92,358	1,867,015	48.5	4,873	328,392	8.62	1,772	146,460	3.84	3,161	161,932	4.77			
COMMERCE	19,790	584,485	49.2	1,782	222,819	18.76	527	62,831	6.87	1,265	139,868	11.78			
DEFENSE	2,621,008	28,512,596	20.53	130,987	7,008,027	5.54	36,076	3,161,894	2.21	94,921	4,746,133	3.32			
EDUCATION	3,674	111,482	12.04	147	16,379	1.86	22	4,908	0.53	125	13,471	1.45			
ENERGY	8,933	536,334	2.85	1,830	233,880	1.26	909	148,716	0.8	621	85,164	0.46			
HEALTH AND HUMAN SERVICES	140,450	1,538,376	31.74	13,205	500,849	10.33	1,409	222,278	4.58	11,797	277,771	5.74			
HOUSING AND URBAN DEVELOPMENT	3,670	291,323	35.73	517	87,280	11.93	135	25,156	3.39	382	72,124	8.54			
INTERIOR	27,194	1,222,897	57	3,547	442,294	26.61	1,444	189,654	8.85	2,183	282,440	11.77			
JUSTICE	286,091	1,474,336	30.47	4,559	1,456,811	30.11	656	243,962	5.84	3,903	1,212,849	25.07			
LABOR	6,321	387,719	27.76	942	178,742	12.89	242	76,386	5.47	700	162,356	7.33			
STATE	15,535	579,806	38.62	3,780	268,431	17.86	1,217	120,289	8.01	2,549	148,142	9.87			
TRANSPORTATION	33,091	1,359,921	54.62	2,968	404,133	16.23	1,803	271,082	10.89	1,183	133,041	5.34			
TREASURY	22,847	866,168	34.79	2,094	312,589	12.55	795	179,060	7.19	1,259	133,419	5.36			
VETERANS AFFAIRS	1,505,025	1,733,183	29.40	61,214	496,358	8.50	6,917	320,969	3.18	55,187	276,389	4.72			
AGENCY FOR INTL DEVELOPMENT	1,421	377,462	69.57	633	198,323	28.18	36	5,591	1.83	596	162,732	28.15			
AMERICAN BATTLE MONUMENTS	3	51	22.27	1	49	21.40	0	0	0	1	49	21.4			
BROADCASTING BOARD OF GOVERN	6,623	28,383	51.72	1,478	5,468	9.96	21	1,965	3.68	1,437	3,501	6.38			
COMMISSION ON CIVIL RIGHTS	9	1	2.22	0	0	0.00	0	0	0	0	0	0			
COMMODITY FUTURES TRADING	397	2,133	16.2	7	423	3.21	0	0	0	7	423	3.21			
CONSUMER PRODUCT SAFETY	604	4,827	57.33	110	2,235	28.55	37	1,618	19.18	73	619	7.35			
CORP FOR NATL & COMMUNITY SERVICE	18	1,784	75.12	1	42	1.77	0	0	0	1	42	1.77			
DEF NUCLEAR FACILITIES SAFETY	23	225	64.29	0	0	0.00	0	0	0	0	0	0			
ENVIRONMENTAL PROTECTION AGENCY	7,303	288,023	26.05	1,986	113,664	16.28	1,163	85,225	7.71	833	28,439	2.87			
EQUAL EMPLOYMENT OPPORTUNITY	4,550	8,711	18.73	66	2,611	5.81	2	426	0.92	64	2,185	4.7			
FEDERAL COMMUNICATIONS	626	11,239	64.56	55	4,478	25.72	2	251	1.44	53	4,227	24.28			
FEDERAL ELECTION COMMISSION	367	628	39.53	1	2	0.13	0	0	0	1	2	0.13			
FEDERAL EMERGENCY MGMT AGENCY	872	62,429	20.24	283	24,428	7.92	82	7,823	2.57	201	16,505	5.35			
FEDERAL ENERGY REG COMMISSION	191	13,936	94.02	13	10,040	45.96	0	0	0	13	10,040	45.96			
FEDERAL MARITIME COMMISSION	17	142	24.78	0	0	0.00	0	0	0	0	0	0			
FBI MEDIATION & CONCILIATION	127	526	40.96	0	0	0.00	0	0	0	0	0	0			
FED MINE SAFETY & HEALTH REVIEW	47	107	44.21	1	8	3.31	1	8	3.31	0	0	0			
FEDERAL TRADE COMMISSION	317	8,768	58.88	6	297	1.38	2	13	0.09	4	194	1.3			
GENERAL SERVICES ADMINISTRATION	98,677	4,697,991	43.71	12,314	1,396,183	13.12	4,942	536,772	5.04	7,472	561,411	8.08			
INTERNATIONAL TRADE COMMISSION	97	1,121	28.79	17	539	13.84	9	516	13.25	8	23	0.59			
KENNEDY CENTER	264	9,216	52.96	71	7,337	41.84	64	7,265	41.43	7	72	0.41			
MERIT SYSTEMS PROTECTION	484	639	47.20	113	61	4.82	99	24	1.78	74	37	2.74			
NATL AERONAUTICS & SPACE ADMIN	26,476	1,631,277	14.52	3,857	751,227	6.69	2,674	445,241	3.56	1,153	305,888	2.72			
NATL ARCHIVES & RECORDS ADMIN	788	13,672	29.65	30	2,677	4.50	4	601	1.3	16	1,476	3.2			
NATL ENDOWMENT FOR THE ARTS	76	569	63.58	17	68	7.60	0	0	0	17	68	7.6			
NATL ENDOWMENT FOR THE HUMANITIES	1,143	958	68.45	70	35	2.40	0	0	0	70	35	2.4			
NATIONAL GALLERY OF ART	1,477	5,588	33.97	0	0	0.00	0	0	0	0	0	0			
NATIONAL LABOR RELATIONS BOARD	524	7,972	82.51	46	3,877	41.16	6	2,508	25.96	34	1,488	15.2			
NATIONAL MEDIATION BOARD	270	2,486	86.53	0	0	0.00	0	0	0	0	0	0			
NATIONAL SCIENCE FOUNDATION	587	15,205	24.35	49	4,643	7.44	13	1,140	1.83	36	3,503	5.61			
NATL TRANS SAFETY BOARD	81	353	96.87	0	0	0.00	0	0	0	0	0	0			
NUCLEAR REGULATORY COMMISSION	664	33,642	43.17	117	9,677	12.34	34	6,067	7.66	63	3,670	4.68			
OCCUPATIONAL SAFETY & HLTH REV	10	22	37.93	0	0	0.00	0	0	0	0	0	0			
OFFICE OF PERSONNEL MANAGEMENT	3,551	182,517	64.26	427	8,488	2.98	230	5,895	2.07	197	2,593	0.91			
PEACE CORPS	148	3,391	20.56	8	545	3.30	2	286	1.73	6	259	1.57			
RAILROAD RETIREMENT BOARD	901	4,078	33.19	22	645	5.25	8	128	1.84	14	517	4.21			
SECURITIES AND EXCHANGE	1,064	13,880	48.22	9	3,671	12.75	0	0	0	9	3,671	12.75			
SELECTIVE SERVICE SYSTEM	104	696	63.1	18	484	43.88	1	11	1	17	473	42.88			
SMALL BUSINESS ADMINISTRATION	593	51,615	72.18	187	15,773	22.60	95	13,230	18.5	102	2,543	3.56			
SMITHSONIAN INSTITUTION	2,053	50,947	49.53	1,300	8,312	8.55	68	4,261	4.14	1,332	5,851	4.91			
SOCIAL SECURITY ADMINISTRATION	85,784	263,900	37.81	3,220	85,233	15.83	240	53,836	10	2,880	31,387	5.83			
US HOLOCAUST MEMORIAL MUSEUM	318	1,991	47.88	7	222	5.34	0	0	0	7	222	5.34			
US SOLDIERS AND ARMYMEN HOME	249	3,478	51.68	10	35	0.51	0	0	0	10	35	0.51			
US TRADE AND DEVELOPMENT AGENCY	349	476,455	85.59	14	126,458	22.72	0	0	0	14	126,458	22.72			

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,  
*Washington, D.C., July 2, 2002*

Senator JOHN F. KERRY, *Chairman,*  
*Senate Committee on Small Business,*  
*428A Russell Senate Office Building,*  
*Washington, D.C.*

DEAR SENATOR KERRY: I am writing to express the Computer & Communications Industry Association's (CCIA) support for S. 2466, the "Small Business Federal Contractor Safeguard Act."

CCIA was founded on the belief that competition and vibrant markets are critical factors in the success of our economy and in our ability to lead the world in innovation and technology. We are the leading industry advocate in promoting open, barrier-free competition in the offering of computer and communications products and services worldwide, and our motto is "open markets, open systems, open networks, and full, fair and open competition."

CCIA is an association of computer, communications, Internet and technology companies that range from small entrepreneurial firms to some of the largest members of the industry. CCIA's members include equipment manufacturers, software developers, providers of electronic commerce, networking, telecommunications and online services, resellers, systems integrators, and third-party vendors. Our member companies employ nearly one million people and generate annual revenues exceeding \$300 billion.

We have found that, in general, contract bundling can harm many small businesses by locking them out of "mega contracts;" can harm taxpayers by promoting procurement of goods and services that may not be cost-efficient; and can hurt vendors of all sizes who do not have the resources to fulfill bundled contracts. We believe that the requirements of S. 2466 in regards to bundled contracts of over \$2 million and \$5 million will go far in ensuring that bundling is used only in the rare case and as the norm.

We appreciate your efforts to promote effective and fair procurement policies, and congratulate you on this excellent proposal. Please let me know if there is anything I can do to assist in passage of S. 2466. You can contact me at (202) 783-0070 ext. 110, or Gabe Rubin of my staff at (202) 783-4070 ext. 107.

Sincerely,

ED BLACK,  
*President & CEO.*

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NEWS RELEASE OF THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION<sup>1</sup>,  
 JULY 1, 2002

CCIA: CONTRACT BUNDLING IMPEDIMENT TO FULL AND OPEN COMPETITION

Washington, D.C.—The Computer & Communications Industry Association (CCIA) today submitted comments to the Office of Management and Budget (OMB) describing the potential competitive barriers created by contract bundling when used for Federal procurement. CCIA submitted its views in response to President Bush's call for comments from affected industries and individuals describing how contract bundling limits "fair and open" competition.

In the comments, CCIA makes several recommendations including: making bundled contracts easier to protest; providing longer times to respond to requests for bundled contracts; giving OMB the authority to resolve disagreements on bundled contracts; and requiring more stringent standards for an agency to request the use of bundling. Additionally, CCIA recommends that the presumption of validity for the use of bundling move away from the affected agency and to those challenging its use.

CCIA recognizes the hard work of several Senators and Members of Congress, and heartily endorses Senator John Kerry's bipartisan "Small Business Federal Contractor Safeguard Act" and Representative Nydia Velázquez' bipartisan "Small Business Opportunity Act." Both pieces of legislation will go far in ensuring greater access to the government procurement system, and better, more cost-effective solutions to acquiring goods and services for the Federal Government. While not just a small business issue, CCIA recognizes that small businesses are disproportionately

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<sup>1</sup> CCIA is an international, nonprofit association of computer and communications industry firms, representing a broad cross-section of the industry. CCIA is dedicated to preserving full, free and open competition throughout its industry. Our members employ over a half-million workers and generate annual revenues in excess of \$300 billion.

ately affected by bundling, and locked out of contracts where they could otherwise provide cost-effective solutions.

“Too many times the Federal Government will decide that it wants to procure from a particular vendor and create a bid process that is tilted against anyone but the one vendor who can provide the ‘mega-contract,’” said Ed Black, President and CEO of CCIA. “This does not achieve the goals of full, fair and open competition that is required from our laws. Moreover, this causes the taxpayers to pay more for what the government wants to do. This is not the way our resources should be used.”

The comments can be found at <http://www.ccianet.org/papers/contract—bundling.pdf>.

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COMMENTS ON COMPETITION IN CONTRACTING REVIEW: CONTRACT BUNDLING, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT

The Computer & Communications Industry Association (CCIA) was founded on the belief that competition and vibrant markets are critical factors in the success of our economy and in our ability to lead the world in innovation and technology. We are the leading industry advocate in promoting open, barrier-free competition in the offering of computer and communications products and services worldwide, and our motto is “open markets, open systems, open networks, and full, fair and open competition.”

CCIA is an association of computer, communications, Internet and technology companies that range from small entrepreneurial firms to some of the largest members of the industry. CCIA’s members include equipment manufacturers, software developers, providers of electronic commerce, networking, telecommunications and online services, resellers, systems integrators, and third-party vendors. Our member companies employ nearly one million people and generate annual revenues exceeding \$300 billion.

For nearly 30 years, CCIA has supported policies that ensure competition and a level playing field in the computer and communications industries. CCIA has been effective in advocating our mission in Congress, in the Executive Branch, and in the courts. Notably, we have taken a keen interest in antitrust enforcement, participating in the cases against IBM, AT&T, and most recently Microsoft. Additionally, CCIA has taken a lead role in advocating that the government should not compete against private sector enterprises, such as current competitive activities undertaken by the United States Postal Service, the Office of Personnel Management, and plans by the Internal Revenue Service.

It is with this strong belief in full, fair and open competition that CCIA was extremely pleased by President Bush’s recent announcement:

government contracting must be more open and more fair to small businesses . . . I know government contracting, if wisely done, can help us achieve a grand national goal . . . But you know as well as I do that there are some large hurdles for small businesses . . . and the main one is . . . that agencies sometime, many times, only let huge contracts with massive requirements . . . called bundling. It effectively excludes small businesses. And we need to do something about that.<sup>1</sup>

CCIA wholeheartedly endorses President Bush’s vision, and is pleased to provide our comments on how contract bundling often fails to achieve the rule of “full and open” competition that “remains the general rule when agencies acquire goods and services.”<sup>2</sup>

In short, most contract bundling is a huge impediment to full and open competition in Federal procurement. Bundling is defined as “the consolidation of two or more smaller contracts into one very large contract.”<sup>3</sup> Invariably, these are contracts that could have been separately bid on by a variety of vendors, achieving the same outcome but with a more cost-effective solution for the government and U.S. taxpayer. The practice of contract bundling deprives small vendors of the ability to com-

<sup>1</sup>President George W. Bush, Address at the Women’s Entrepreneurship Summit (March 19, 2002) (transcript available at <http://www.whitehouse.gov/news/releases/2002/03/20020319-2.html>).

<sup>2</sup>Competition in Contracting; Contract Bundling; Notice of Public Meeting and Request for Comments, 67 Fed. Reg. 87, 30403 (May 6, 2002).

<sup>3</sup>*Procurement Policies of the Pentagon with Respect to Small Businesses and the New Administration: Hearing Before the House Comm. on Small Bus.*, 107th Cong. 51 (2001) (Statement of Susan M. Walthall, Acting Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Bus. Admin.).



pete for many Federal sales, as many compete in niche areas and are not able to fulfill contracts that reach beyond their business specialty. The numbers make this fact clear: for every additional 100 bundled contracts, there is a corresponding decrease of 106 contracts awarded to small firms.<sup>4</sup>

Contract bundling was also cited by the House Small Business Committee Democrats as a major impediment for Federal agency contracting with small businesses. In a recently released report, Ranking Democrat Nydia Velázquez (D-New York) emphasized the woeful performance of the Federal Government's track record in accomplishing its statutorily defined small business goals.<sup>5</sup> In grading 21 agencies, only one received a grade of A; one received a grade of B; seven received a grade of C; 10 received a grade of D; and two received failing grades.<sup>6</sup> Senator Christopher "Kit" Bond (R-Missouri) has also faulted contract bundling as anticompetitive, resulting in contracts that small businesses are unable to perform "due to its complexity or its obligation to do work in widely disparate geographic location[s]."<sup>7</sup> Senator Bond further stated that contract bundling "eliminates small businesses from competing for contracts to sell the government some of the \$200 billion in goods and services it buys every year."<sup>8</sup>

Clearly, contract bundling is a device that locks out many qualified vendors and strikes at the heart of fair and open competition. In addition to costing taxpayers valuable resources, the restrictions in availability of these contracts will hurt these vendors' ability to survive, thus reducing future competition.<sup>9</sup> CCIA certainly does not believe that it is the Federal Government's responsibility to subsidize small business, or specifically use its purchasing power to buttress vendors who otherwise would not be in a position to provide goods or services on competitive terms. This also parallels President Bush's comments: "I do not believe the role of government is to create wealth. . . . The role of government is to create an environment that facilitates the flow of capital, and an environment in which people can realize their dreams."<sup>10</sup> However, there is a great difference between subsidizing small businesses that aren't competitive and placing onerous restrictions that unnecessarily foreclose viable businesses from bidding for Federal contracts. In CCIA's view, contract bundling, in its current excessive use, has operated to do the latter.

CCIA recognizes that there may be circumstances that warrant the use of bundled contracts but cautions that they should be used in only the most sparing cases. In general, Federal law appears to discourage bundling but allows it when there would be "measurably substantial benefits" including: cost savings; quality improvements; reduction in acquisition cycle times; better terms and condition; or *any other benefits*.<sup>11</sup> While the agency is required to conduct market analysis to determine if bundling is "necessary and justified,"<sup>12</sup> the language of "any other benefit" is troubling due to its vagueness. Further, it should be noted that there is no guarantee ensuring the independent quality of market research, and such research has recently come under attack for its less than objective reporting.<sup>13</sup> Given the limitations of relying on questionable market research, CCIA believes that this data, used to justify *any other benefit*, creates too much leeway for vendors and agencies to game the system.

There are other particular circumstances when bundling is allowed, such as when the agency reasonably believes that de-aggregating tasks to separate contracts would be impracticable;<sup>14</sup> when effective coordination of the tasks involved require

<sup>4</sup> *The Impact of Contract Bundling on Small Business: FY 1992–FY 1999*, Report by Eagle Eye Publishers, Inc. to the U.S. Small Bus. Admin. Office of Advocacy, (September 2000).

<sup>5</sup> See generally *2002 Scorecard III: Small Bus.: Opportunity Denied*, Report by the House Small Bus. Comm. Democrats, (May 15, 2002).

<sup>6</sup> *Id.* at 8.

<sup>7</sup> Senator Kerry Introduces Legislation to Limit "Contract Bundling," 44 No. 19 Gov't Contractor 189 (May 15, 2002).

<sup>8</sup> *Id.*

<sup>9</sup> See Ishak Akyuz, *Bundling into the New Millenium: Analyzing the Current State of Contract Bundling*, 30 Pub. Cont. L.J. 123, 124 (2000).

<sup>10</sup> President George W. Bush, Address at the Women's Entrepreneurship Summit (March 19, 2002).

<sup>11</sup> See 15 U.S.C. § 644(e)(2)(B) (2000).

<sup>12</sup> See 15 U.S.C. § 644(e)(2)(A) (2000).

<sup>13</sup> See e.g. *Analyzing the Analysts: Hearing Before the House Subcomm. on Capital Mkts., Ins. and Gov't Sponsored Enterprises*, 107th Cong. (2001).

<sup>14</sup> Ishak Akyuz, *Bundling into the New Millenium: Analyzing the Current State of Contract Bundling*, 30 Pub. Cont. L.J. 123, 125–6 (2000) (citing EAI Corp., Comp. Gen. B–283129, Oct. 7, 1999, 99–2 CPD ¶69).

a single contractor;<sup>15</sup> when unbundling would create undue technical risks;<sup>16</sup> when interoperability and compatibility would be hampered;<sup>17</sup> when the agency has integrated the purchasing and installation on systems;<sup>18</sup> and when the procurement results in a novel approach that will provide substantial benefits to the agency.<sup>19</sup> While protests have demonstrated that contract bundling will be rejected when the agency's rationale for doing so is insufficient or unreasonable,<sup>20</sup> considering all the circumstances in which bundling is allowed, as described above, it appears that agencies have wide latitude and discretion in bundling contracts. In CCIA's view, this discretion often leads to unwise bundling, and as a result, the current structure is an ineffective one for ensuring fair and open competition.

There are two notable legislative efforts to reform contract bundling and CCIA wholeheartedly endorses both. In the House, the bipartisan Small Business Opportunity Enhancement Act (H.R. 2867) has passed the Small Business Committee and is awaiting floor action. This bill would amend the Small Business Act to give the Director of the Office of Management and Budget (OMB), or a subordinate who is appointed by the President and approved by the Senate, the authority to resolve disagreements on bundled or "mega" contracts in addition to extending the time period from 30 to 60 days for a small business to respond to a solicitation for a bundled contract. By moving the appeal process from the affected agency to OMB, bundled contracts will likely face more rigorous scrutiny and not be rubber-stamped, an issue that the Small Business Committee identified as a major problem in bundled contract appeals.<sup>21</sup>

Senator John Kerry (D-Massachusetts) has introduced the bipartisan Small Business Federal Contractor Safeguard Act (S. 2466). This bill provides more stringent guidelines for allowing a bundled contract. It would require, for bundled contracts over \$2 million, a statement of benefits, a statement of alternative approaches, and a specific determination that the bundling is necessary and the anticipated benefits justifies bundling. The bill adds further requirements for contracts over \$5 million, including conducting market research, an assessment of impediments to small business participation, and specified actions to maximize small business participation. Additionally, these contracts will not be accepted if the "necessary and justified" determination is based solely on administrative and personnel savings unless those savings will be substantial.

Taken in tandem, these two approaches would go far in ensuring more access by a wider array of vendors into the government procurement process. CCIA also recommends that protests be automatically available in the case of bundled contracts and that Congress should direct the Government Accounting Office (GAO) to shift the presumption away from the affected agency when determining if a bundled contract is necessary and justified. Anecdotally, CCIA has determined that in too many instances, Federal agencies give far too much deference to their procurement offices in determining the appropriate scope of bundling of contracts, and in turn GAO gives these agencies overly broad latitude. This trend needs to be reversed. CCIA believes that the aims of H.R. 2867, moving dispute resolution to OMB, would be an effective way to begin to overcome this hurdle.

CCIA believes contract bundling serves as a significant impediment to not only fair and open competition, but more importantly, fosters shortsighted decision-making resulting in limiting the value the government ultimately receives for their investments in technology.

A recent example can be found with the implementation of agency Financial Management Systems required under GAO's Joint Financial Management Information Program (JFMIP) where contract bundling is prevalent, resulting in unfair (or lack of) competition and the elimination of both "best of breed" and Small Business as solution providers. Under the direction of the GAO, JFMIP documentation calls out for a "single integrated system". The document further explains that this does NOT mean one software solution yet this is exactly the path recently taken by such agencies as NASA, the Navy and programs such as the Army's Wholesale Logistic Modernization Program (LOGMOD). In each case, a foreign-based provider was selected

<sup>15</sup> *Id.* (citing Electro-Methods, Inc., 70 Comp. Gen. 53, 90-2 CPD ¶363, at 5; LeBarge Prods., Inc., Comp. Gen. B-232201, Nov. 23, 1998, 98-2 CPD ¶510, at 3-4).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing Tucson Mobile Phone, Inc., Comp. Gen. B-274684.2, Feb 1, 1994, 94-2 CPD ¶45)

<sup>19</sup> *Id.* (citing S&K Elecs., Comp. Gen. B-282167, June 10, 1999, 99-1 CPD ¶111, at 4).

<sup>20</sup> Ishak Akyuz, *Bundling into the New Millenium: Analyzing the Current State of Contract Bundling*, 30 Pub. Cont. L.J. 123, 125-6 (2000) (citing Better Serv., Comp. Gen. B-265751.2, Jan 18, 1996, 96-1 CPD ¶90, at 3; Ralph C. Nash, *Contract Bundling: An Update*, 12 Nash & Cibinic Rep. ¶9 at 24-5 (1998)).

<sup>21</sup> H.R. REP. NO. 107-432, at 3 (2002).

to support the modernization of the agency financial system. Agencies have gone on to further justify the use of this solution for all encompassing agency requirements at what appears to be significant and elevated costs resulting in reduced value to the government.

Further contract bundling is frequently the precise hidden objective of the “so-called independent” analysis from consultant firms who strive to benefit from their very same decisions. In our opinion, the government needs to have a far more critical review of “independent” analysis performed by consultants and organizations. Certainly, the top Fortune 100 companies are NOT moving toward a single or one software solution relying on an individual organization. They realize the risk is just too high to depend on “one” software provider, but instead move toward a strategic alliance with several software companies that meet a high degree of their critical needs (i.e. financial, HR–Human Resources, physical assets, IT assets). Consultant organizations will provide integration but allow the client company or agency to have the benefit of superior products which fit the specific needs of their organization.

In summary, bundled contracts greatly harm the competitive process. As the Federal Government spends over \$219 billion annually, making it the largest purchaser in the world,<sup>22</sup> procuring the best solutions for government agencies in a fair, competitive and thus cost-effective way should be of paramount importance. The Federal Government has the ability to make winners and losers in the marketplace. As previously stated, CCIA does not advocate using this power to unduly help businesses that can’t compete effectively in the marketplace; however, it should not use this system to lock out vendors who can compete, but for unnecessary, burdensome contracting requirements. While much discussion of bundling revolves around small businesses, CCIA’s position is not that this is solely a small business issue. Rather this is one that affects vendors of all sizes, and more importantly, it affects all citizens in how much they pay for goods and services through their taxes, and what they will receive. CCIA appreciates the President’s dedication to this issue, and welcomes the quick action on the part of OMB in assembling these written comments, and oral comments at the open meeting recently held. If you have any further questions, or if CCIA can be of more assistance, please do not hesitate to contact CCIA President & CEO, Ed Black.

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<sup>22</sup> *Federal Agencies Receive Poor Grades for Small Business Contracting*, 44 No. 20 Gov’t Contractor 195 (May 22, 2002).

**Statement of  
John C. Bollinger, Deputy Executive Director  
Paralyzed Veterans of America  
to the  
House Small Business Committee  
Hearing on Small Business Success Stories**

**May 8, 2002**

Mr. Chairman and members of the committee, Paralyzed Veterans of America (PVA) commends you for holding this hearing to explore achievements in entrepreneurship. Small businesses are the under-appreciated engine of our economy and represent the major source of new jobs in the United States.

Small business programs targeted to service-connected disabled veterans have been an important resource for many of our members in reaching economic self-sufficiency. However, today, we want to focus on the broader community of entrepreneurs with disabilities and avenues that they have used to reach for this piece of the American Dream.

With the passage of the Americans with Disabilities Act, the societal myth that work and disability are mutually exclusive is gradually disappearing. Although the unemployment rate for people with significant disabilities remains unacceptably high, owning and operating a business is viewed increasingly as an appealing avenue to independence by people with disabilities. Indeed, many individuals with disabilities have already discovered the value of entrepreneurship and have used a variety of resources to enter the world of small business enterprise.

Lisa Miljevic is a member of PVA from Florida. While serving in the Air Force, she was injured in an automobile accident. As she pursued rehabilitation at the Richmond, Virginia Veterans Affairs Medical Center (VAMC), she concluded that the spokes on her wheelchair could use some dressing up. She enlisted some friends to paint designs on some of the covers that fit over the spokes on her chair and Spokeguard Art was born. She consulted with a local plastics company about product development and, using her home as collateral, secured a bank loan to start her business last October. Today, her company offers standard and custom decorated covers for anything on wheels from wheelchairs to dirt bikes to bicycles.

Last January, a Washington, D.C. summit on entrepreneurship and disability sponsored by the President's Task Force on Employment of Adults with Disabilities and The Abilities Fund featured a panel of successful entrepreneurs with disabilities. Among them was Jeffrey Campbell, owner of the Soul City Café in Des Moines, Iowa. After his disability forced him onto a restricted diet, he still felt a need for the kind of comfort food with which he had grown up as a young

inner-city child. He developed a "heart healthy" soulfood menu for himself but soon found friends and neighbors clamoring for his creations and out of that grew a catering business. When demand grew too great, he opened his restaurant using help from The Abilities Fund and his state department of vocational rehabilitation.

Another panelist at the summit, Nan Asher from Michigan, was a volunteer for a non-profit helping people with auditory disabilities select appropriate devices to aid them in hearing. Because the hearing equipment usually had to be obtained first from a catalogue or warehouse, individuals in need of the aids didn't have a chance to try out the devices to see if they worked for them. With help from a center for independent living, the department of vocational rehabilitation and her local Small Business Administration office, Nan obtained a van to bring hearing devices to individuals' homes where they can be demonstrated before purchase. Not only has this proven useful to her original customers in the deaf and hard-of-hearing communities but her services could be helpful to homebound senior citizens.

For several years, the Rural Institute at the University of Montana has received funds from the U. S. Rehabilitation Services Administration to study and develop projects promoting rural small business and self-employment opportunities for people with disabilities. In one project funded by the U. S. Department of Labor, a young man with bipolar disorder established a glass installation business with a grant of \$20,000 obtained with the assistance of the local Small Business Development Center. After its first year of operation, his business grossed over \$100,000 a quarter.

Like any good entrepreneur, these individuals first had an idea and then had the creativity and persistence to investigate and explore ways to bring that idea to reality. They have also identified products and services with a potential customer base beyond just those with disabilities.

Whether by choice or necessity, many of them used non-traditional sources of financing for their start-up capital. In one of the first surveys of entrepreneurs with disabilities, the Rural Institute found that almost 60 percent of their respondents used personal savings for the initial investment in their businesses. Only 18 percent obtained funding from traditional lending institutions.

Non-traditional agencies also play a significant role in helping many small business owners with disabilities get started or expand their companies. Typically, the Small Business Administration is considered the lead agency for nurturing and promoting entrepreneurs. For entrepreneurs with disabilities, however, the Department of Labor, Social Security Administration and many state departments of vocational rehabilitation appear to have served as important incubators for launching their enterprises.

The foregoing does not mean that barriers to small business do not exist for people with disabilities. Last year, The Abilities Fund conducted an "environmental scan" for the President's Task Force on Employment of Adults with Disabilities and found four "critical barriers to self-employment and business ownership for those within the disability community." These barriers are:

1. **Inadequate access to capital.** For every entrepreneur with a disability who manages to finance his or her business, there are many people with disabilities who would like to start or expand a business who cannot do so because of money constraints. High unemployment and credit difficulties may make debt financing impractical. Means-tested public assistance programs that severely restrict assets and resources limit the ability of people with disabilities to accumulate crucial up-front capital.
2. **People with disabilities are considered unlikely prospects for business ownership.** Due to myths and stereotypes and lack of visible role models, people with disabilities are seldom encouraged to pursue small business ownership.
3. **Rehabilitation professionals seldom support clients with a goal of self-employment.** While some state vocational rehabilitation agencies have undertaken small business initiatives for their clients, seldom do vocational rehabilitation counselors have the training, knowledge or background to advise clients who want to set up a business. As a result, the emphasis is on placement of an individual into a job rather than exploring community resources to assist emerging entrepreneurs.
4. **Mainstream business development professionals are uncomfortable working with clients with significant disabilities.** Communications difficulties, fears of being "politically incorrect" and general unfamiliarity with the disability community have meant few efforts at outreach on the part of traditional business development organizations.

PVA urges the members of this committee to devote some attention to a long-neglected sector of our free enterprise system -- small business owners with disabilities. Although there are numerous actions that the government could take to assist and support entrepreneurs with disabilities, we suggest the following initial steps:

1. Congressional Small Business Committees should conduct oversight hearings into the status of entrepreneurship among individuals with disabilities, including barriers to and initiatives that support small business ownership by people with disabilities.
2. The Small Business Administration should be asked to document the number of small business people with disabilities that it has served in its programs.

3. The White House Conference on Small Business is held approximately every five years. The last such conference was held in 1995. The next conference should feature entrepreneurs with disabilities in its program and include discussions on issues of importance to small business owners with disabilities.

PVA thanks the Chairman and members of the committee for their attention to our statement. Self-employment is a booming industry -- growing, according to some estimates, at a rate of over 20% each year. We would welcome the opportunity to work with the committee and other members of the disability community to highlight and promote the success of entrepreneurs with disabilities.

#### PVA Awareness Week – Focus on Entrepreneurship and People with Disabilities

As part of Paralyzed Veterans of America Awareness Week, I write to share with you PVA's interest in efforts to enhance small business opportunities for people with disabilities.

While many of PVA's members have access to small business programs targeted to service-connected disabled veterans, over half of PVA members cannot use those programs because their injuries were sustained outside military service. For that reason, PVA has joined with the Consortium for Citizens with Disabilities and its Employment and Training Task Force to draw the attention of Congress to the potential that entrepreneurship holds for economic self-sufficiency for individuals with disabilities.

Especially since passage of the Americans with Disabilities Act, societal perspectives on the relationship between work and disability have evolved to a point where these are not seen as mutually exclusive. Yet, the unemployment rate for people with significant disabilities stands at approximately 75 percent. Recently, a study conducted by the University of Montana Rural Institute on Disabilities found that approximately one-fourth of participants in a Rehabilitation Services Administration demonstration project expressed interest in starting their own business. Clearly, owning and operating a business is viewed increasingly as an appealing avenue to independence by people with disabilities.

However, a survey conducted in 2001 by The Abilities Fund for the President's Task Force on Employment of Adults with Disabilities found four "critical barriers to self-employment and business ownership for those within the disability community." These barriers are:

1. **Inadequate access to capital.** High unemployment, credit difficulties and public assistance programs that severely restrict assets and resources limit the ability of people with disabilities to accumulate the up-front capital so often necessary to start-up or expand a business.
2. **People with disabilities are considered unlikely prospects for business ownership.** Due to myths and stereotypes and lack of visible role models, people with disabilities are seldom encouraged to pursue small business ownership.
3. **Rehabilitation professionals seldom support clients with a goal of self-employment.** Most vocational rehabilitation counselors seek to place clients in jobs and rarely have the training, knowledge or background to advise clients who want to set up a business.
4. **Mainstream business development professionals are uncomfortable working with clients with significant disabilities.** Communications difficulties, fears of being "politically incorrect" and general unfamiliarity with the disability community have meant few efforts at outreach on the part of traditional business development organizations.

To address these barriers, PVA and others in the disability community have identified a variety of actions that policymakers could take to promote small business ownership by individuals with disabilities. Following are some initiatives that we believe the Small Business



Committees of the U. S. Congress should explore to foster greater entrepreneurial opportunities for people with disabilities.

Barrier #1 - Inadequate access to capital.

- The Small Business Administration [SBA] should reinstate and rename its Handicapped Assistance Loan Program to help small businesses owned by entrepreneurs with disabilities. It has not been funded since the mid-1990s.
- Other SBA programs such as PRIME, the 7[a] guaranteed loan program and 7[m] microloan program could be better marketed to entrepreneurs with disabilities.
- Lenders and financial institutions should be encouraged -- through credit incentives, loan guarantees and other federal oversight policies -- to market their services to small business owners with disabilities just as they are encouraged to market to women and minority business owners. Currently, 70 percent of private microenterprise loan funds are unused, leaving a large untapped pool that could serve entrepreneurs with disabilities.
- Lenders need better research data and guidance in assessing "risk" when evaluating a loan application from a small business owner with a disability.

Barrier #2 - People with disabilities are not viewed as good prospects for small business ownership

- The Senate and House Small Business Committees should conduct oversight hearings into the status of entrepreneurship among individuals with disabilities, including barriers to and initiatives that support small business ownership by people with disabilities.
- The Census Bureau should do a periodic survey of entrepreneurs with disabilities just as it currently conducts such surveys of women-owned businesses. This would draw attention to the numbers and issues of existing businesses owned by people with disabilities.
- The White House Conference on Small Business is held approximately every five years. The last conference was held in 1995. The next one should include and feature discussions on issues critical to entrepreneurs with disabilities.
- SBA and other relevant federal agency websites should feature entrepreneurs with disabilities.
- SBA should document the number of small business people with disabilities it has served in its programs and report on the status and success of its Disability Initiative Program.

Barrier #3 -- Promoting small business as an employment option for people with disabilities

- Vocational rehabilitation agencies and Department of Labor One Stop Career Centers should establish formal partnerships with SBA's Small Business Development Centers and other local business outreach agencies to provide clients with appropriate guidance about going into business.
- SSA should establish memorandums of understanding with SBA, Rehabilitation Services Administration [RSA] and Department of Labor [DoL] to create capital reserve pools for employment networks serving entrepreneurs with disabilities. Such funds could address the equity many people with disabilities lack to invest "up front" money in a business as well as start-up capital that may be needed for employment networks serving entrepreneurs with disabilities.
- Small business owners with disabilities should have presumptive eligibility for SBA's 8[a] program for disadvantaged businesses. The 8[a] program's value lies in federal contracting opportunities it gives to program participants along with the fact that 8[a]

designation opens other business possibilities through the public or private sectors. Entrepreneurs with disabilities must go through a lengthy, bureaucratic process to be certified for 8[a] whereas other disadvantaged small business owners with presumptive 8[a] eligibility do not.

Barrier #4 -- Engaging the mainstream business community in supporting entrepreneurs with disabilities

- Through the White House Conference on Small Business and other forums, the administration should encourage the Chamber of Commerce, National Federation of Independent Businesses and other national business associations to promote small business ownership among people disabilities through mentoring programs and other strategic alliances.
- SBA's Small Business Development Centers should be given support and adequate resources to offer technical assistance and partnership opportunities to entrepreneurs with disabilities.

Miscellaneous

- SBA and the DoL Office of Disability Employment Policy should produce a compendium of public and private sector resources for entrepreneurs with disabilities.
- As the Congressional Small Business Committees prepare for procurement reform in the next Congress, consideration should be given to the degree to which federal procurement policies are attuned to small business owners with disabilities.

PVA would welcome the opportunity to discuss these ideas in greater detail with you. Please feel free to contact me should you have any questions or desire more information.

For additional statements by PVA about SBA, entrepreneurship and people with disabilities, go to [www.pva.org](http://www.pva.org) under Capitol Hill and PVA/Advocacy.



# LAMA

**LATIN AMERICAN MANAGEMENT ASSOCIATION**

July 2, 2002

Senator John Kerry, Chairman  
Senate Small Business Committee  
304 Russell Senate Bldg.  
Washington, DC 20510

Dear Senator Kerry:

Thank you for your leadership in hosting the recent Minority Business Round Table. The Round Table is an excellent forum, and those of us in leadership positions really appreciate it. I would also like to mention that Patty Forbes and John DaSilva are just excellent people. They are great on the issues, and very supportive of our constituency. They are a credit to you!

LAMA strongly supports your Ombudsman bill and the 30% goal for small business. The Ombudsman bill is simply a terrific idea. If an ombudsman had already been in place at the SBA, the virtually unreported steep drop in 8a contracting in the years 1999 and 2000 would have been highly visible and something could have been done about it a lot sooner. In addition, we hear many, many complaints from our members about various federal contracting agencies and nothing gets done about it. If these types of complaints get rolled up in a highly publicized annual report, these bad behaviors will gradually change.

The increase in the small business goal to 30% is very timely. The notion that 77% of the federal procurement budget should be the special preserve of large business is objectionable. The current goal of 23% cannot accommodate all of the socio/economic programs and still leave anything for the small business community. I'm surprised that we have not heard more complaints from the mainline small business organizations on this matter.

The argument that, since we haven't achieved 23%, why increase the goal to 30%, is nonsense. With that kind of thinking, there would never have been a goal at all. As you know, a number of agencies (Interior - Agriculture - Transportation) are already achieving on the order of 50% small business contracting.

We appreciate your leadership on these matters and the great work of your staff.

Yours truly,

Stephen Denlinger  
CEO

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*LAMA is the oldest national Hispanic business organization in the United States*

Statement by Major General Charles R. Henry (Ret.),  
President and CEO of The National Veterans Business Development  
Corporation, "The Veterans Corporation"  
before the Committee on Small Business and Entrepreneurship  
Roundtable Wednesday, June 19, 2002

**INTRO:**

Thank you, I'm General Chuck Henry, President and CEO of the National Veterans Business Development Corporation. That's a lot to say so we call it "The Veterans Corporation". I'm pleased to have this opportunity to be here this morning and I want to personally thank Senator John Kerry and Senator Max Cleland for their recent support of legislation granting our corporation "no year" funding for FY'02. Their support will allow us the flexibility to truly think and act like a business in generating revenues that support veteran and service disabled veteran entrepreneurial training and services.

**Re: Federal prime and subcontracting goals:**

I believe contracting officers can't attain the 3% goal for service disabled veterans and the 3% goal for veterans because it is a goal and not a set-aside. Contracting officers and their supervisors are also not motivated in a positive manner to do the necessary outreach to identify and assist service disabled veterans and veterans to successfully compete for government procurements. An unenforceable

goal provides veterans no advantage over other competitors for federal procurement dollars.

I would suggest to you that the Veterans Corporation MarketPlace, which can be reached through our homepage: [www.veteranscorp.org](http://www.veteranscorp.org) can provide government purchase card users with a secure, central site to identify and purchase from quality veteran businesses below the \$2,500 micro-purchase threshold. As DOD, alone, spent over \$8 billion in purchase card purchases last year, there is ample opportunity for them, VA and other Government agencies to achieve their veteran goals if government buyers are motivated to do so. We intend to enhance the website so that the socio-economic categories appearing in the central contractor registration website are also choices that purchase cardholders can use in determining who they will do business with. The MarketPlace has report capabilities that will then record these purchases by veteran or socio-economic status of the sellers.

**Re: Improving the SBA's small business contracting programs:**

I would like to thank the Congress for creating the position of associate administrator for veterans business development in the Small Business Administration. I am confident that the current associate administrator, Mr. Bill Elmore, will do everything humanly

possible to ensure that our veterans and disabled veteran entrepreneurs get the attention and assistance they need and deserve.

**Re: Procurement legislation before the Committee:**

Any future legislation must be crafted to motivate those who award contracts and I also believe the future is in electronic tools that provide us with effective oversight and accountability. I believe we need to:

- Hold the Executive Branch responsible for meeting goals.
- Establish goals and decrement the appropriations of those agencies that miss them.
- Withdraw contracting authority of those agencies that fail to meet goals.
- Give the Ombudsman authority to take effective action when goals are missed.
- Require Primes to meet their goals as a condition of future awards.

As a former U.S. Army procurement officer I know that contracting officers are often overworked and under the gun to produce. Bundling seems inevitable. I'm told that the average age of our government acquisition workforce is approaching 50 and many will retire in the near future. We should harness the vast capabilities of e-commerce

over the Internet to make our procurement offices more efficient and effective. The tools already exist to electronically order and pay for virtually all the goods and services our government needs to operate efficiently and with significant savings. We can electronically capture how these purchases are made and from whom. Progress toward goal attainment can be monitored electronically by agency, quickly, securely and accurately. Additionally, electronic audit trails and approval controls can help preclude purchase card fraud, waste and abuse so often reported in the press. Most importantly, small businesses will have an opportunity to compete not from a storefront but on a national level. Congress should encourage government agencies to more aggressively pursue using commercial electronic marketplaces that can identify, sort and record purchases by socioeconomic categories. I again thank you for this opportunity to appear before the Procurement Roundtable and share in its discussion.

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1 July 2002

The Honorable John F. Kerry, Chairman  
United States Senate  
Committee on Small Business & Entrepreneurship  
Washington DC 20510-6350

Dear Senator Kerry:

Thank you for the opportunity of participating in the roundtable on 19 June 2002. As state Program Manager for the Missouri Procurement Technical Assistance Centers (MO PTAC), president-elect of the national Association of Government Marketing Assistance Specialists (AGMAS) with approximately 60,000 small business clients, and having served for over 27 years in the U.S. Air Force in the contracting career field, I have a broad perspective and procurement insight that I hope was useful to you in the roundtable. It was very informative for me and I trust the information provided by the seventeen participants was helpful to you in preparing needed legislation and assistance in making the federal government procurement procedures more user friendly and helpful to the entire small business community.

Enclosed are my comments concerning the discussion and three Senate bills. If you desire any further information, you may contact me at 573 882-3597, FAX 573 884-4297 or email [HUDSONM@MISSOURI.EDU](mailto:HUDSONM@MISSOURI.EDU). Again, let me express my appreciation for being invited to participate in this worthwhile event.

Sincerely,

Morris R. Hudson  
Program Manager

A Member of the Procurement Technical Assistance Network

A statewide effort of Missouri Small Business Development Centers, University Extension,  
and the Department of Defense



Senate Committee on Small Business

And Entrepreneurship

“Are Government Purchasing Policies Failing Small Businesses?”

June 19, 2002

Prepared Comments of Morris R. Hudson

Thank you for the opportunity of participating in your roundtable on June 19, 2002, and providing these written comments. My name is Morris Hudson. I am Program Manager of the Missouri Procurement Technical Assistance Centers (MO PTAC) located at the University of Missouri in Columbia, Missouri. In addition, I am the president-elect of the Association of Government Marketing Assistance Specialists, a national organization that represents the interests and addresses the concerns of a growing nationwide network of procurement assistance professionals. I, and my colleagues in the 88 other PTAC programs located in 44 states plus Puerto Rico, work closely with businesses – especially small, minority, woman-owned and veteran owned businesses – assisting them in their efforts to do business with the Department of Defense and other federal, state, and local government agencies. We see, on a daily basis, the facets of government buying practices that work well, and those that present serious obstacles to more small business participation. I would like to mention that my background consists of over 27 years in the contracting career field (contracting officer, procurement manager) in the Air Force and over nine years experience with the MO PTAC, so I have viewed problems from two different perspectives in forming my opinions about the complex area of government procurement.

The Procurement Technical Assistance Program (PTAP), that funds all of our Centers through the Defense Logistics Agency and local matching funds, was created by Congress in 1984 to address some of the issues we’re facing today – how to expand small business participation within the federal government by simplifying and removing unnecessary obstacles. At that time the sheer complexity of the procurement process was a primary barrier to small businesses, and the PTACs’ mission has been to guide them, step by step if necessary, through all stages of the process including identifying appropriate buying offices that may purchase their goods or services, assisting with registration in systems such as the DoD’s mandatory Central Contractor Registration (CCR) system, the SBA’s Procurement Network (PRO-Net) listing of small businesses interested in doing business with the government, locating the proper point of contact (buyer or contracting officer), assisting with marketing their products or services to the appropriate government organization, identifying relevant solicitations on which they may bid, providing federal and military specifications and standards that are not included with the solicitations, assisting with the preparation of bids and proposals, and helping with other issues or problems that arise during the solicitation or contract performance

phases. The PTACs are frequently approached by buying offices and government prime contractors to help identify qualified local vendors. This intensive assistance has proven to be very effective. In 1999, the most recent year for which confirmed national statistics are available, 78 centers served 28,361 new clients (totaling approximately 60,000 clients overall), resulting in the award of over \$6.8 billion in contracts and the creation or retention of over 156,000 jobs. This award figure of \$6.8 billion is based on actual award letters that are submitted by clients to our Centers. The actual impact is certainly much greater, for many awards are not reported back to us for a variety of reasons.

The PTAP provides a vital service to our government by continually drawing new companies – new resources – into the federal, state, and local marketplaces thus expanding the industrial base of our nation.

I will now provide comments addressed to each of the topics and questions provided at the roundtable.

#### A. Federal Prime and Subcontracting Goals

1. Why is meeting small business goals important? Because support of small businesses is national policy and goals help chart the course in expending public monies and assuring they are receiving their fair share. The Federal Acquisition Regulation (FAR) in 19.201 (a), General policy, states: "It is the policy of the Government to provide maximum practicable opportunities in its acquisition to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business." These goals are important because of the small business community's contribution to the national economy and well being of its citizens through innovation of new ideas and technologies which result in the generation of profits and creation of jobs.
2. How accurate is goal reporting? Are there specific areas where improvements can be made? Based on my over 27 years of experience in contracting in the Air Force, my impression is that accomplishment of meeting or not meeting small business goals and the proper reporting is very accurate. A significant amount of management attention was consistently given to accurate reporting. I am not aware of any specific areas where improvements can be made, but there may be confusion about the way accomplishments toward goals are reported. For example, the award of a contract to a minority, service-disabled, female owner of a small business located in a HUBZone would most likely be accurately

reported through government channels in all categories. Is this in error? Probably not, but the receivers of the information need to understand how the information is accumulated and reported.

3. Why is the federal government failing to achieve small business goals, and who is accountable for goal achievement? In my opinion, this is due to the severe cutbacks in the number of persons in the acquisition/contracting government work force. There simply are not enough people to do all the things that need to be done. When I reported to my last active duty assignment, the organization had just passed over 800 in the number of personnel authorizations. When I visited the area a couple years ago, the number had just dropped below 300. Although I do not have access to workload information, I have no reason to assume it has decreased significantly. Again, my experience was that procurement people, including managers and workers, were very concerned and dedicated to achieving small business goals. One must also realize that there are many other demands placed on contracting people, the main one being to award contracts in a timely and fair manner that satisfy the requirements of the agencies. This in no way diminishes the importance of socio-economic goals, but the reality must be taken into account. If there is a requirement, particularly an urgent or emergency one, whereby going to a small business will unreasonably delay the procurement as opposed to buying from an existing source, large or small, the contract will probably be awarded in the manner that will most expeditiously satisfy the need. In terms of who is accountable for goal achievement, contracting officials often are held responsible for small business and other similar goals. However, this fails to take into account the situations within the mission and requirements areas of the organization where the inventory situation itself may dictate the outcome of efforts to achieve these goals. This would necessitate the assignment of small business goals at levels above these lower organization heads.

#### B. Improving the SBA's Small Business Contracting Programs

1. What are the hurdles to small business participation, and how does government policy help or hurt? One of the major hurdles to small business participation in federal government contracting is the amount of time it takes, particularly in the beginning. Access to information and procedures and processes has to be obtained, proper registration(s) has to occur and then understanding the procedures and processes so one may correctly respond to those needs is very time consuming. Often a small business just does not have the time it takes to devote to government contracting, even with the assistance of organizations such as the PTACs. Secondly, obtaining the information needed to bid is often illusive. The solicitation may be located at one web site, the federal and military specifications and standards may be at another, and the technical data located at another. This often frustrates the small business to the extent that he/she decides to not pursue the solicitation further. Often just the

administrative requirements one must work through to be eligible to do business with the government are overwhelming. For example, just the numbers and codes a company must be able to provide and/or relate to from the beginning when entering federal government contracting include: Taxpayer Identification Number (TIN); Data Universal Numbering System (DUNS) Number; Commercial and Government Entity (CAGE) Code; North American Industry Classification System (NAICS) Code; Federal Supply Class (FSC); Product Service Class (PSC); National Stock Number (NSN); National Item Identification Number (NIIN); Accounting Classification Reference Number (ACRN); Central Contractor Registration (CCR) Number; CCR Trading Partner Identification Number (TPIN); Marketing Partner Identification Number (MPIN); American Banking Association (ABA) Routing Number; Bank Account Number; and the PRO-Net Number. Although over time there have been efforts to eliminate duplication, it does still exist. For example, the DoD and a few other agencies require that all contractors register in the CCR. Several other agencies do not use the CCR, but rely on other systems such as the SBA PRO-Net system, another good data collecting tool. However, there are many identical elements of information although each system has its own unique elements (CCR requires the Electronic Funds Transfer (EFT) information and PRO-Net requests past contract history information). It would seem that at a high level within the federal government agreement could be reached to join the systems thus eliminating this frustrating duplication.

2. Where can small businesses turn to for help when problems arise? The Procurement Technical Assistance Centers (PTACs) are excellent organizations to provide assistance to companies wanting to do business with the government. Paragraph E.1. titled "Purpose and Objectives" in the Defense Logistics Agency Solicitation for Cooperative Agreement Applications states in part that the PTACs "...may provide specialized and professional assistance to individuals and businesses seeking to learn about contracting and subcontracting opportunities . . . ." The paragraph goes on to refer to the services to be provided and further states, "Participants in this program are expected to make a concerted effort to see out and assist Small Businesses, Small Disadvantaged Businesses (SDB), Women-Owned Small businesses (WOSB), Historically Underutilized Business Zone (HUBZone) Small Business Concerns, Service-disabled Veteran-owned Small Businesses, and Historically Black Colleges and Minority Institutions (HBCU/Ms)." Many of the people in the PTACS are former contracting officials within the government and understand the policies and procedures and are able to explain these to the companies. Furthermore, assistance with understanding solicitation and contract clauses as well as assisting with preparation of the bid is provided. If a company is in need of management, accounting, or financial assistance, the Small Business Development Centers (SBDCs) are excellent organizations to turn to. Other helping organizations are the

SBA, the Service Corps of Retired Executives (SCORE) and the business assistance centers hosted by some government agencies.

3. Federal procurement law, statute versus regulation? From the standpoint of the small business person attempting to comply with a requirement, it matters little whether a procedure is established by law or regulation. If the requirement is in the solicitation or contract, the small business person must comply regardless of the basis or source. However, presumably it would be easier to change a requirement established by regulation than it would one established by law.

#### C. Procurement Legislation Before the Committee

1. S.1994, the "Combined 8(a) and HUBZone Priority Preference Act." This is a bill that will assist both government procurement officials and the small businesses in helping them understand the application of preferences for these two programs. However, it is not clear that application of the price preferences is mandated or just an option that can be used during the award phase of the contract. Some financial managers may be reluctant to allow payment of a premium, even if it is for a just cause, if application of the preference is not mandated.
2. S.2466, the "Small Business Federal Contractors Safeguard Act. I applaud recognition by this committee that contract bundling is a problem for small businesses. This action to remedy this problem will be welcomed by many small businesses throughout our country. Some officials within the government deny that bundling is a problem and offer options such as "teaming" or subcontracting with the successful prime contractor, neither of which very often solves the problem for the small business. Too often the small business finds itself locked out of the opportunity to compete for government contracts, sometimes in situations where it has been successfully performing for years. Clarifying the language and policy surrounding bundling is a step in the right direction. However, additional action is necessary to correct the basic problem that actually created the bundling problem. That is the tremendous reduction of authorized personnel spaces in the acquisition/procurement workforce over recent years. Bundling has become one of the solutions to offset this problem, not because officials wanted to prevent small businesses from receiving contracts, but because they had to find efficiencies in utilization of the personnel they still had in their organization. As mentioned above, the last procurement organization I was assigned to in the Air Force has shrunk by over 50% in the past several years. This creates tremendous pressure on those procurement officials to still meet mission requirements in the most economical and efficient way possible.
3. The "Small and Disadvantaged Business Ombudsman Act." This is clearly recognized as a genuine effort to place more attention on achieving the small business goals in the federal government marketplace. However, I fear that the legislation does not go far enough in actually solving the problem for the small business. The draft legislation does not address the

consequences if agencies do not meet their goals, only that reports with explanations will be made to the ombudsman. Most likely some form of this report already exists within the government. At least that was my experience. Close attention was given to meeting small business and other goals (competition for example) and explanations had to be made up the chain of command when missed. Also, it is not clear what is achieved by raising the goal to 30% when the 23% goal is not now achieved. Again, the main cause of the problem is the lack of adequately trained contracting personnel and the solution is to provide legislation significantly authorizing personnel increases. Short of that, this draft legislation will only have minimum effect, if any, on improving the small business participation performance.

4. Other legislative proposals and ideas. One area that could positively assist in increasing small business participation concerns better publicizing the procurements between \$2,500 and \$25,000. Currently, there is a good system, FedBizOpps, for publicizing procurements over \$25,000. However, a very high percentage of procurement actions fall between \$2,500 and \$25,000 and access to these acquisitions on a federal government wide basis is quite bureaucratic and cumbersome to the small business requiring accessing multiple web sites rather than having one, such as FedBizOpps. A considerable amount of time could be saved by the small business and most likely competition would increase if the government agencies would provide similar publicizing for these requirements. In the past when publicizing procurement actions often depended on the mail system, there was a legitimate reason for not having to publicize these requirements, but with the introduction of electronic commerce technology, this problem no longer exists. Secondly, many very small businesses as well as larger businesses struggle with the electronic commerce (EC) technology requirements as it relates to government contracting and other business endeavors. Most PTACs are not staffed to the level necessary to provide substantial EC assistance beyond searching for bidding opportunities and assisting with registrations and administrative actions. However, the PTACs are extremely knowledgeable about the need for this, already have an established database of small businesses within their respective states and have the organizational infrastructure. Additional funding provided to the PTAP for this purpose would assist many small businesses immensely in EC.

In closing, I appreciate very much being invited to comment on your fine initiatives to improve the participation of small business in the federal marketplace. I am most pleased by this committee's attention to these vital issues. The consequences of policy and legislation in these areas are serious, both for the health of our economy that is fueled by small business, and the strength of not only our armed forces, but our government as a whole. I hope my comments have been helpful to you and I am available to answer any questions or provide any additional information. Thank you.



**SUBMITTED COMMENTS**

**BY**

**BARBARA KASOFF**

**VICE PRESIDENT**

**WOMEN IMPACTING PUBLIC POLICY (WIPP)**

**TO THE**

**U.S. SENATE COMMITTEE ON SMALL BUSINESS  
AND ENTREPRENEURSHIP**

**ROUNDTABLE DISCUSSION**

**“ARE GOVERNMENT PURCHASING POLICIES  
FAILING SMALL BUSINESS?”**

**JUNE 19, 2002**

My name is Barbara Kasoff and I am co-founder and vice president of Women Impacting Public Policy (WIPP). I want to thank you, Mr. Chairman, for inviting WIPP to participate in the roundtable discussion, "Are Government Purchasing Policies Failing Small Businesses?". As a national bi-partisan non-profit public policy organization that advocates on behalf of its membership of more than 250,000 small business owners across the country, the majority of whom are women and minorities, WIPP is acutely aware of the many shortcomings of government purchasing policies as they relate to women and minority-owned businesses and appreciates the opportunity to take part in a constructive environment.

Of utmost concern to WIPP and its members is the fact that even though Congress has passed laws in recent years to help level the playing field as it relates to procurement opportunities for small business owners, the enforcement and accountability of these laws has fallen well short of their intentions. A specific example is the unexplained delays in the implementation of a contract setaside program for women-owned businesses as called for in P.L. 106-554. As the Committee is aware, the Women's Procurement Program was established by Section 8(m) of the Small Business Act enacted into law in 2000 as a direct means to increase the participation of women-owned small businesses in the Federal procurement sector. But yet, more than 18 months later, the program remains a program on paper only. The SBA claims that its study on proposed program regulations raised "legal concerns" and had "statistical problems" and, as a result, has pulled the study from consideration by the Office of Management and Budget.

Let me quickly recap WIPP's efforts to move the process along: In April, WIPP President Terry Neese participated in a conference call with SBA officials, including Administrator Hector Barreto, regarding the study and the lack of implementation of the Women's Procurement Program. During the call, Mr. Barreto stated that, one, the original study would be made public and that, two, a new study would be conducted. Following the conference call, WIPP wrote a letter to Mr. Barreto, which we copied to you, Mr. Chairman, and to Sen. Kit Bond, as ranking member. As you'll recall, the letter asked Mr. Barreto for a copy of the original study he said in the call would be made



public, and asked for a timeline under which the new study would be conducted. To this date, more than two months later, WIPP has yet to receive a response from Mr. Barreto or anyone with the SBA. In fact, it appears that Mr. Barreto will “set aside” the Women’s Procurement Program – a part of a law he’s required to comply with – and instead will “pursue a variety of alternative approaches to providing enhanced opportunities for women-owned businesses.”

We have been patient but our patience is running low. We believe the SBA is stonewalling the implementation of the Women’s Procurement Program for unexplainable reasons. As members of Congress, I hope you share the outrage felt by WIPP and its members over this situation.

On a similar note, WIPP is aware of a similar recent letter from you, Mr. Chairman, and Sen. Bond to Mr. Barreto requesting that he consider lifting the Clinton Administration’s three-year moratorium (which is now in its seventh year!) on Small Disadvantaged Business (SDB) set-asides. In his response to your request, Mr. Barreto indicated recent increases in the amount of procurement dollars going to SDBs make the set-asides unnecessary. Yes, the amount of procurement dollars going to SDBs did nearly double during the past six years, but let’s not overlook that the amount still remains below the statutory goal of 5 percent!

Everyone benefits from having small businesses and women-owned businesses involved in federal procurement. Not only do government contracts provide much needed revenue and opportunity for growth to these businesses but the involvement of small businesses also ensures more competition for government contracts that equates to lower prices and higher quality. That is why WIPP supports the idea behind S.2466, the “Small Business Federal Contractors Safeguard Act,” which seeks to once and for all create a uniform government policy that eliminates contract bundling. WIPP is also in support of S.1944, the “Combined 8(a) and HUBZone Priority Preference Act” and look forward to seeing its successful passage by both bodies of Congress.

WIPP looks forward to hearing more about the yet-to-be-introduced “Small and Disadvantaged Business Ombudsman Act” and appreciates your efforts, Mr. Chairman, on behalf of small businesses. The appointment of an ombudsman or small business “specialist” at each federal agency, whose sole responsibility was to see that mandated SDB and women-owned business goals were met, might be an answer to the problem. Also, somehow we’ve got to bridge the communication gap that obviously exists between the federal procurement officers, prime contractors and small businesses. Maybe the ombudsman or specialist could serve as a direct liaison between the agency’s procurement office, prime contractors and small business owners.

Day in and day out we hear from WIPP members as they share their struggles and frustrations at trying to break into the federal procurement arena. In a recent survey among more than 1,500 women business owners, they were asked: “What is the best way to ensure that women-owned businesses are awarded the Congressionally mandated 5 percent goal of federal contracts?” The resounding answer from more than 90 percent was threefold: More accountability, strong leadership and more government set-asides.

In summary, it is abundantly clear that the federal agencies who have been charged with fulfilling the Congressional mandates in regard to access to procurement opportunities for small businesses, especially women and minority-owned businesses, are blatantly ignoring these mandates. Unfortunately, the agencies are not going to comply on their own. WIPP looks forward to working with the Committee to ensure America’s small businesses and women-owned businesses get what they need: more accountability, strong leadership and more government set-asides.

Thank you for including WIPP in today’s roundtable discussion. We always appreciate the opportunity to address the Committee.

ADDITIONAL WRITTEN COMMENTS BY WOMEN IMPACTING PUBLIC POLICY FOR THE  
COMMITTEE ROUNDTABLE

ARE GOVERNMENT PURCHASING POLICIES FAILING SMALL BUSINESS?

Mr. Chairman: On behalf of Women Impacting Public Policy, (WIPP), we are responding to questions raised at the June 19 Roundtable Discussion, "Are Government Purchasing Policies Failing Small Business?" Specifically, Women Impacting Public Policy (WIPP) wants to go on record as supporting the draft language submitted by Chairman Kerry at the hearing regarding the creation of a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration (SBA).

Women own more than 9 million businesses in this country, employ more than 27.5 million and contribute more than \$3.6 trillion to the nation's economy. Yet, since the Federal Acquisition Streamlining Act, enacted 7 years ago, women-owned firms have received, at most, 2.2 percent of all contracting dollars.

Given those statistics, our support for the creation of an Ombudsman for procurement at the SBA should come as no surprise. There is no question in our members' minds that the SDB Ombudsman should serve as a facilitator between Federal agency procurement officers, small businesses (especially women-owned firms) and prime contractors.

The interagency coordination required through each Federal agency's Office of Small and Disadvantaged Business Utilization (OSDBUs) in the proposed language, should go a long way toward ensuring procurement goals for women-owned and minority-owned businesses are met. Toward that end, the confidentiality provision of the proposed legislation is absolutely essential to making that happen.

WIPP understands that Committee members may differ on where to place the Ombudsman within the SBA. We believe the Committee must make a judgment as to where the Ombudsman can be the most effective independent voice for small and disadvantaged business. Certainly, no Ombudsman can be effective unless he/she is perceived to have enough authority and access to compel compliance among Federal agencies and prime contractors. We feel certain the Ombudsman cannot be an effective voice for our members if he/she is hampered by the perception of being subject to political pressures rather than being a true advocate for small and disadvantaged businesses.

Finally, we support increasing the governmentwide small business goal from 23 percent to 30 percent. As Senator Bond indicated in his opening remarks at the Roundtable, the government is not currently meeting the 23 percent goal. WIPP believes, however, raising the goal to 30 percent provides leadership from the Congress that Federal agencies must continue to strive to work with small businesses. At the same time, setting higher goals must be accompanied with a strong goal attainment plan. The proposed legislation requires a plan from each agency on how to meet the targets if they fail to do so. WIPP believes that consequences for failing to meet the goals should be stronger than requiring a plan. Our small business owners face much greater consequences when they fail to meet their business targets. Failure to meet business goals results in lost revenue for small businesses. In the private sector, failure of employees to meet company goals and objects results in lost jobs. We suggest that Congress consider a similar model for the agencies. Those agencies failing to meet their goals, should face a decrease in their budget by a corresponding amount. We urge the Committee to explore stronger enforcement measures for agencies failing to meet their small business goals.

6/29/02

**Additional comments of the HUBZone Contractors National Council for the Record  
of the Roundtable on 6/19/02 of the United States Senate Committee on Small  
Business & Entrepreneurship**

**Regarding S 2466 Small Business Federal Contractor Safeguard Act**

This bill requires Federal Departments to put forth benefits of consolidation actions over \$2 million. We recommend these benefit studies be released to the public after they are conducted by the Departments. They could be posted on a Department web site or incorporated into the RFP. This will give the public a better understanding of what is consolidated and why. It will also require Departments to conduct meaningful studies. At a minimum, the Department should be required to forward a copy to the SBA.

Regarding Sec 2 (3) CONTRACT TEAMING item (C) states "NO EFFECT ON STATUS AS A SMALL BUSINESS CONCERN..." This Council is concerned that this may be interpreted to allow a very small business to team with a very large business and bypass or avoid the small business affiliation and other current SBA regulations designed to protect small businesses from having to compete against large businesses with a small business "front." This should not be allowed.

**Specific language items:**

In Sec. 2 (B) Necessary and Justified—"the head of an agency may..." does the word "agency" mean the head of the contracting agency or does it mean the head of the Federal Department (such as the Secretary of Labor).

In Sec. 2 (C) (i) we recommend that the words "current market research that demonstrates" be changed to "current market research that clearly and convincingly demonstrates"

**Draft Bill--Small and Disadvantaged Business Ombudsman Act**

In general, this Council strongly supports many of the concepts of the proposed bill. However, we are very concerned with the creation of a new organization within SBA that will focus on Government contract matters as required by the draft bill. This Council recommends that all new government contracting missions and functions be assigned to the SBA Associate Deputy Administrator Government Contracting and Business Development. This current organization is the main organization within the SBA focussed on small business Government contracting matters. This Council does not want to dilute this organization's responsibilities and authority regarding contracting. We recommend assigning the stated tasks for the Ombudsman to the Associate Deputy Administrator Government Contracting and Business Development and providing ample

new resources to meet the requirements of the bill. The requirements for the Ombudsman as written in the draft bill are all very worthwhile and this Council fully endorses the missions assigned to the Ombudsman in the draft bill.

This Council would like to see more small business contracting—particularly within the HUBZone community. An increase to 30% all at once may be a little bit too much—we do not want to discourage the Agencies from trying to achieve their goal. We recommend the Committee consider raising the HUBZone portion of the goal to 4% and the overall goal to approximately 27% in this increment. In a few years, as the Departments achieve 27%, the goal could be raised again to 30%.

#### **S. 1944 Combined 8(a) and HUBZone Priority Preference Act**

- Sole Source Threshold Increase- concur with this aspect of the bill.
- Price Evaluation Preference (PEP) – This Council feels that the combined 20% is too great but we do support some form of a combined price evaluation preference in full and open competitions—somewhere between 11% and 17% is probably the correct amount. We recommend 14%.
- Priority Preference—HCNC strongly does not concur.

What does “comparable” mean--identical, similar, or capable of being compared? If one student gets a “A” in the course and the other gets a “C” are they comparable? Don’t leave it up to the SBA or the FAR Council to interpret what the intent of Congress was?

More importantly than the definition of “comparable”(unless you select identical), S1994 will move to create a super class of firms—“the haves” (2 certifications) and the “have nots” (only 1 certification).

If the Senate passes this bill, you will create this problem in the HUBZone community and we have enough problems. The HUBZone Program is a competition-based Program. Sole source is virtually non-existent today in the HUBZone Program. HUBZone firms depend on the economic forces of the marketplace for their survival. The bill’s proposed market “interference” may very well end Program participation for 80% of the HUBZone firms (the have nots).

We recommend that the priority preference provisions be changed to allow for the dual certified firm to get a very very slight preference/advantage when competing in a HUBZone set-aside or an 8(a) competitive procurement. This very slight preference should be limited to 1% price advantage. Any preference more than this will be very harmful to the HUBZone set-aside program. This Council’s view is that without any new preference, dual certified firms get special preferences already—they get to participate in both the HUBZone and the 8(a) Programs! This is enough. We are very reluctant to attempt to modify traditional market forces within the HUBZone set-aside or the 8(a)

competitive Program and we urge the Committee to ensure this aspect of the bill is eliminated or reduced to a 1% price advantage!

Thank you for the opportunity to share our views with the Committee.

**STATEMENT OF WOMEN FIRST NATIONAL LEGISLATIVE COMMITTEE**

**SUBMITTED TO THE**

**COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP**

**UNITED STATES SENATE**

**ROUNDTABLE:**

**“Are Government Purchasing Policies Hurting Small Business?”**

**BY:**

**JOANN PAYNE**

**Founder and President of:**

**Women First National Legislative Committee  
Payne Shea and Associates**

**June 19, 2002**

**Mr. Chairman, Senator Bond and Members of the Committee:**

Thank you for the opportunity to be part of this roundtable discussion on small businesses. On behalf of Women First National Legislative Committee ("Women First"), I am pleased to submit this statement for the record in response to your roundtable discussion "Are Government Purchasing Policies Hurting Small Business?" I am also pleased to respond to any and all policies that support women-owned small business entrepreneurs.

First, Women First is a national advocacy organization that represents the interests of women-owned businesses certified to participate in the United States Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) program, and such businesses that participate in similar State and local disadvantaged business programs. Women First was established in 1985 for the purposes of advocating the plight of women-owned businesses in the highway, transit and airport construction industries. As you may be aware, women-owned businesses are presumed to be socially and economically disadvantaged within the USDOT DBE program. Women-owned businesses have been part of the DBE program since 1987, and to date have successfully competed for prime and subcontracting opportunities within the transportation construction arena.

Women First has also played a major role in other advocacy areas affecting women-owned small business contractors. For example, Women First has provided advocacy assistance to accomplish the following:

- Added women to the DBE Program in 1987.
- Successfully advocated for changes to the old DBE regulations that discriminated against women.
- Subsequent Reauthorizations of the DBE Program.



- Development of New USDOT DBE Regulations and Goals.
- 1999 Memorandum of Understanding (MOU) between USDOT & United States Small Business Administration (SBA).
- Worked closely with the Department of Justice on *Adarand* related issues and defense of *Adarand* v *Mineta*.
- 2000 Executive Order Supporting Women-Owned Businesses Access to Procurement.
- “Seat at the Table,” National Women’s Business Council.

I believe the USDOT DBE program has vastly improved government contracting opportunities for women-owned small businesses. The DBE program is not a set-aside program, but rather a goals oriented (10 % combined for minorities and women) program that encourages prime and subcontracting opportunities for qualified women contractors. Further, the DBE program has withstood *Adarand* constitutional challenges and its regulations are narrowly tailored to ensure constitutional protection.

#### **RESPONSE TO ROUNDTABLE QUESTIONS**

In response to several of your roundtable questions, Women First submits the following:

##### **A. Federal prime and subcontracting goals:**

###### **(1) Why is meeting small business goals important?**

Federal contracting goals provide a standard for which agencies, both federal and state, should meet to ensure fair competition among government contractors. Without contracting goals, federal, state and local agencies would return to the “Good Old Boy” days of personal preferences and “contractor nepotism”. The problem with goals is not the requirement for them, but rather the lack of enforceability. Without appropriate enforceability, oversight and prioritization, goals are in effect useless.

To ensure appropriate effect---fair and equal opportunity to compete for federal contracts--- SBA should have greater authority to enforce small business goals. Such authority could include exclusive arbitration over contract set-asides, strategies, consolidations and protest processes.

Further, Small Business Utilization personnel located and controlled by each federal agency should report to and be controlled by SBA.

Otherwise, such utilization personnel will promote their respective agency's interest and not that necessarily of small businesses.

(2) How accurate is goal reporting? Are there specific areas where improvement can be made?

The main problem with goal reporting is SBA's inability to verify the goal numbers and the accuracy of the data collected for both prime and subcontracting activity. Further, goal reporting can be somewhat misleading. For example, a small business owned by an 8(a) HUBZone women-owned contractor is counted four times for purposes of small business goals: a small business, a SDB, a HUBZone company and women-owned. Another misleading example is how SDB totals are counted. SDB numbers include not only certified SDB and 8(a) contract dollars, but also small business contracts awarded to minorities who may or may not participate in certified disadvantaged programs. Thus, it is possible that minority small businesses that are not certified as disadvantaged businesses are being counted as SDBs.

SBA simply lacks the means and personnel to independently verify the data collected by OFPP. This has traditionally been a problem for SBA

and the inability to verify such data places SBA at a great disadvantage.

SBA also lacks the ability to enforce MOU's relating to the 8(a) BD program between itself and other federal agencies. Thus it is difficult, if not impossible, for SBA to properly analyze the business development activities of 8(a) firms that receive contracting assistance.

To ensure greater compliance, it is my opinion that SBA, at its highest levels and in conjunction with OMB, should challenge other federal agencies to meet the goal requirements of 15 U.S.C. 644. In addition, SBA should establish a quarterly reporting system that assists agencies with their goal progress or lack thereof. Without greater resources and advocacy at the highest levels, SBA is simply "in the dark" as to whether small business goals are being properly obtained, and is thus subject to the subjective calculations and determinations of the other agencies. In essence, it is analogous to allowing the students to grade themselves.

(3) Why is the federal government failing to achieve small business goals and who is accountable for goal achievement?

Again, the lack of enforceability, resources, appropriate advocacy and prioritization is an underlying problem with goal achievement. SBA is limited by its lack of real enforcement powers and resources.

(4) Other Issues. Women Small Business Goals

Women small business goals are simply not being obtained. Although since 1994 both the White House and the Congress have undertaken efforts to improve women-owned government contracting opportunities, it appears the actual implementation of such efforts has failed miserably.

To improve women government contracting opportunities, I believe there should be a legislative program specifically established at SBA or the Department of Commerce that targets women-owned contractors. This program should provide business development opportunities such as sole source and set-aside competitive contracting, a mentor-protégé program, joint venturing opportunities, an annual women's contracting forum like "Small Business Week" or "MED Week", increased financing opportunities and greater enforceability of prime and subcontracting goals. I believe a women-owned small business program (i.e. similar to the DBE program) will demonstrate that the Executive Branch and Congress are serious about women-owned small business goal requirements.

**B. Improving the SBA's small business contracting programs**

- (1) What are the hurdles to small business participation, and how does government policy help or hurt?

Small business hurdles are as follows: access to federal markets, financing, marketability, discrimination, personal preferences of contracting officers, lack of appropriate enforceability powers, contract bundling-consolidation, subcontracting requirements, and price competition. Government policy provides more help than ~~h~~ hurdles. I believe a "laissez faire" government approach would hurt and not assist small businesses. Again, the problem with small business opportunities and development lies with SBA's inability and limited resources to enforce §§15 U.S.C. 644 and 637. In addition to greater enforceability

powers, there must also be a commitment by the highest levels of SBA and the Executive Branch to ensure that such goals are obtained.

(2) Where can small businesses turn to for help when problems arise?

Certainly for purposes of government contracting assistance, SBA and its national district offices, Procurement Center Representatives (PCRs), Business Opportunity Specialist (BOSs) and other SBA representatives can provide some front line assistance. However, by the time SBA is forced to become engaged with such problems, the “horse is out of the barn” sort of speak and it becomes very difficult for SBA to successfully protect small business interests. Also, small business utilization personnel located at each federal agency should report to SBA and a greater number of PCRs should be hired nationally to facilitate opportunities for small businesses. Again, resources, advocacy, and enforceability powers play a major role in this process.

(3) Federal procurement law, statute versus regulation?

Certainly new federal statutes that provide greater SBA enforcement powers will assist small businesses and goal achievement. Current regulations, in my opinion, are consistent with the limitations and requirements of current statutes. Regulations are not the issue; rather, it is the inability of SBA to enforce the goal requirements.

(4) Other issues.

Subcontracting goals and enforceability of subcontracting plans remain an issue for small businesses. It is also important that SBA is appropriated the resources to evaluate and collect subcontracting data.

**C. Procurement legislation before the Committee**

(1) S.1994 the "Combined 8(a) and HUBZone Priority Preference Act."

This Bill appears to provide greater government contracting opportunities for 8(a)-HUBZone certified small businesses both for set-aside 8(a) and HUBZone contracting and open and unrestricted contracting. However, since there are relatively few such businesses at this time, I believe the initial impact may be minimal. This Bill should increase the number of such businesses and I assume this is the other purpose of the Bill--- to encourage 8(a)-HUBZone joint certification. The new sole source threshold should benefit both 8(a) and HUBZone companies.

(2) S. 2466 the "Small Business Federal Contractors Safeguard Act."

The premise for this Bill is well intended and should increase small business contracting opportunities. However, I believe this Bill lacks appropriate enforcement power on part of SBA to challenge consolidations above \$2 and \$5 million and retains with the contracting agency the exclusive authority to determine the reasonability of such procurement strategy. It appears to me this Bill may be burdensome to both SBA and other Federal agencies without providing any real relief to small businesses.

A more effective Bill could provide a core central procurement strategy that requires agencies to provide specific types of prime and subcontracts for qualified small businesses, such as civilian agency contracts up to \$5 million that includes consolidation conditions and other prime and subcontracting opportunities for contracts above \$ 5 million; perhaps even goal enhancements opportunities for agencies that provide contracts above \$10 million.

(3) The “Small and Disadvantaged Business Ombudsman Act.”

This proposed Bill should provide a necessary advocate for small disadvantaged businesses. However, with powers to report, review, analyze and to coordinate without the agency authority to enforce will simply establish yet another person or entity that celebrates the problem without the ability or resources to fix it. Further, the 8(a) program office should be provided increased funding for advocacy activities relating to small disadvantaged businesses without having to incur greater expense for additional advocate offices.

(4) Other legislative proposal and ideas

- For purposes of meeting women contracting goals, legislate Executive Order 13157 signed by President William Jefferson Clinton on May 25, 2000.
- Develop effective MOUs between SBA and other federal agencies to facilitate opportunities for women-owned businesses.
- Strengthen the federal subcontracting program by eliminating subcontracting plan requirements and enforcing contractual goals.
- Develop a women’s government contracting program for those industries where women are determined to be disadvantaged.

- Strengthen all certification programs and streamline or consolidate the certification processes among all agencies.
- Adjust the counting and tracking procedures for contracting goal achievements.
- Better monitor “best value” contracts.
- Legislate enforcement procedures for prime and subcontracting goals.



**Statement of the American Subcontractors Association  
Senate Committee on Small Business and Entrepreneurship  
Roundtable  
Are Government Purchasing Policies Failing Small Business?  
June 19, 2002**

Senator Kerry and members of the Committee, thank you for the opportunity to appear at this Roundtable to discuss some of the issues surrounding federal procurement which impact specialty contracting and subcontractors in the construction industry.

My name is James Turpin and I represent the American Subcontractors Association (ASA). ASA is a non-profit membership trade association representing subcontractors and specialty trade contractors. We are the only construction trade association that concentrates exclusively on the business issues affecting all subcontractors and specialty trade contractors.

As the largest owner and purchaser of construction services, the federal government is in a unique position to set both the tone and precedent for the rest of the economy. For that reason, the actions of the federal government take on even more significance than in many other parts of the economy.

In addition to the issues contained in the call for this meeting, we would like to bring to your attention some additional purchasing practices that adversely impact the companies we represent. These include bid-shopping on federal construction contracts, extending payment protections to cover federal grants, and expanding the use of direct disbursement as a method of payment.

Bid-shopping

The competitive bidding system used for federal construction is based on the award of a contract to the lowest responsive and responsible bidder. Unfortunately, the actual result is often different because of a practice known as bid-shopping. When this occurs the integrity of the entire system is compromised.

At the same time, such a manipulation deprives taxpayers of the full benefit of fair competition among contractors and subcontractors and too often results in poor quality of work. The reduced subcontract cost is not passed on to the owner, in this case the federal government – they simply go to increase the profit of the general contractor.

As far back as 1995, the Associated General Contractors of America, the American Subcontractors Association, and the Associated Specialty Contractors joined in opposing this practice. At that time, those organizations said the following:

Bid shopping or bid peddling are abhorrent business practices that threaten the integrity of the competitive bidding system....

The bid amount of one competitor should not be divulged to another before the award of the subcontract or order, nor should it be used by the contractor to secure a lower proposal from another bidder on that project.

I asked that the complete text of this Guideline be included in the record.

In response to this prevalent practice, our organization is supporting HR 1859, The Construction Quality Assurance Act. The measure proposed by Rep.

Paul Kanjorski (D, PA) and 23 co-sponsors would do the following:

- Prohibit any contractor or subcontractor from participating in the practice of bid-shopping.

- Any invitation to bid by the Federal government shall include a clause explicitly prohibiting the practice of bid-shopping.

- A contracting officer who becomes aware of a violation can either

- o Cancel the contract
  - o Impose treble damages.

- Proof of violation on two occasions in a five year period will result in debarment or suspension.

The legislation is being supported by a broad group of specialty contractor organizations representing a cross section of those performing federal work. I ask that a copy of the legislation and a list of the current co-sponsors be included in the record.

A more detailed history of the issue is included in an article by T.J. Ferrantella entitled "Bid-shopping and Bid-peddling: It May Be Legal: But Its Certainly Not Ethical." I ask that this article be included in the record.

We hope to get companion legislation to HR 1859 introduced in the Senate. We look forward to working with you in coming up with a workable solution to this problem.

#### Payment Protection on Federal Grants

Slow payment on public construction contributes to cash flow problems of contractors and subcontractors. Prior to the early 1980's, subcontractors faced with uncertain payment schedules were forced to consider the worse case

scenario when pricing their bids. The 1988 amendments to the Prompt Payment Act of 1982 made it clear that subcontractors, in addition to general contractors, were entitled to prompt payment of invoices submitted to the Federal government. This law affirmed prompt payment of subcontractors as serving the interests of the federal construction owner.

While many states have followed the model of the federal government in passing prompt payment legislation, the terms and strength of these laws vary greatly. For that reason, ASA supports legislation to extend the protections of the federal Prompt Payment Act to federal grant programs. This would guarantee uniform protections on jobs involving federal funding. When subcontractors can count on timely payment, owners using federal funds will see the speed of delivery, the quality of service, and the price, all improve to their benefit. Federal legislation on this subject has been considered since at least the 103<sup>rd</sup> Congress. We hope this issue will now be addressed and clarified.

#### Direct Disbursements

The traditional payment system creates cash flow problems for subcontractors. An alternative system, known as direct disbursement, is frequently used in some parts of the country. The federal government experimented with the idea on a pilot basis in the late 1980's but soon abandoned the effort.

There is a need for a better system of handling construction payments which will:

protect the government and the subcontractor  
 speed the flow of funds to those performing the work  
 preserve the ability of the general contractor to control the job.

Direct disbursement meets that need. Under the direct disbursement method, the construction owner or its agent pays all service and major materials providers for a construction project directly. Once the general contractor certifies that a subcontractor has properly completed a portion of his work, the subcontractor is paid directly by the owner or its agent.

Direct disbursement can be used for any type of construction project. As I indicated, it has worked successfully in both the public and private sector.

In short, direct disbursement brings greater accountability to construction financing. Because of this, ASA supports the use of direct disbursements in lieu of the traditional payment system in construction. With advancements in technology as well as the commitment of the federal government to streamlining the procurement process, the time is right to give serious consideration to direct disbursement on federal construction projects.

Again, we thank you for the opportunity to appear at this roundtable and to raise these issues with the Committee. As an integral part of the construction industry, we look forward to working with the committee in a positive way to benefit the federal government, the companies we represent, and ultimately the taxpayer, the ultimate consumer of federal building services.

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**Guideline on**  
**Bid Shopping and Bid Peddling**

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Bid shopping or bid peddling are abhorrent business practices that threaten the integrity of the competitive bidding system that serves the construction industry and the economy so well.

The bid amount of one competitor should not be divulged to another before the award of the subcontract or order, nor should it be used by the contractor to secure a lower proposal from another bidder on that project (bid shopping). Neither should the sub-

contractor or supplier request information from the contractor regarding any subbid in order to submit a lower proposal on that project (bid peddling).

The Associated General Contractors of America, the American Subcontractors Association, and the Associated Specialty Contractors oppose these practices.

1995

*Bill Summary & Status for the 107th Congress***NEW SEARCH | HOME | HELP | ABOUT COSPONSORS****H.R.1859**

Sponsor: Rep Kanjorski, Paul E.(introduced 5/16/2001)

Latest Major Action: 5/21/2001 Referred to House subcommittee. Latest Status: Referred to the Subcommittee on Technology and Procurement Policy.

Title: To assure quality and best value with respect to Federal construction projects by prohibiting the practice known as bid shopping.

**COSPONSORS(23), ALPHABETICAL** [followed by Cosponsors withdrawn]: (Sort: by date)

Rep Andrews, Robert E. - 5/16/2001	Rep Baird, Brian - 5/2/2002
Rep Berkley, Shelley - 3/13/2002	Rep Bonior, David E. - 6/13/2002
Rep Davis, Danny K. - 6/5/2002	Rep Filner, Bob - 1/24/2002
Rep Gonzalez, Charles A. - 6/13/2002	Rep Hinchey, Maurice D. - 5/16/2001
Rep Horn, Stephen - 5/16/2001	Rep Israel, Steve - 4/10/2002
Rep Jones, Stephanie Tubbs - 6/21/2001	Rep Kaptur, Marcy - 3/12/2002
Rep Kennedy, Patrick J. - 5/2/2002	Rep Kucinich, Dennis J. - 5/16/2001
Rep LaFalce, John J. - 5/15/2002	Rep Langevin, James R. - 4/10/2002
Rep Maloney, Carolyn B. - 5/16/2001	Rep Pallone, Frank, Jr. - 5/16/2001
Rep Pascrell, Bill, Jr. - 6/13/2002	Rep Rush, Bobby L. - 6/13/2002
Rep Sanders, Bernard - 5/16/2001	Rep Strickland, Ted - 6/20/2001
Rep Wynn, Albert Russell - 3/12/2002	

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Hit List	Best Sections	<a href="#">Help</a>
	Doc Contents	

---

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### Construction Quality Assurance Act of 2001 (Introduced in House)

HR 1859 IH

107th CONGRESS

1st Session

H. R. 1859

To assure quality and best value with respect to Federal construction projects by prohibiting the practice known as bid shopping.

### IN THE HOUSE OF REPRESENTATIVES

May 16, 2001

Mr. KANJORSKI (for himself, Mr. Horn, Mrs. Maloney of New York, Mr. Sanders, Mr. Kucinich, Mr. Hinchey, Mr. Pallone, and Mr. Andrews) introduced the following bill; which was referred to the Committee on Government Reform

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### A BILL

To assure quality and best value with respect to Federal construction projects by prohibiting the practice known as bid shopping.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the 'Construction Quality Assurance Act of 2001'.

### SEC. 2. FINDINGS.

Congress finds the following:



- (1) Certain unfair and undesirable practices, known as bid shopping, have arisen between contractors and subcontractors from time to time in construction work for the Federal Government.
- (2) Bid shopping threatens the integrity of the competitive bid system, which well serves the construction industry and the economy.
- (3) Bid shopping deprives taxpayers of the full benefits of fair competition among contractors and subcontractors, and often results in poor quality of material and workmanship to the detriment of the public.
- (4) Because when bid shopping occurs the cost savings gained are not passed on to the Federal Government, while the simultaneous reduction in quality and value are passed on, the procurement practices of the Federal Government should be modified to prohibit bid shopping.

### **SEC. 3. DEFINITIONS.**

In this Act:

- (1) **CONTRACT**- The term 'contract' means any contract with the Federal Government, exceeding \$1,000,000 in amount, for the construction, alteration, or repair of any public building or public work of the United States.
- (2) **BID SHOPPING**- The term 'bid shopping' means the practice of a contractor asking, requiring, or otherwise pressuring a subcontractor to lower bids for subcontracts, or accepting lower bids from subcontractors, after submitting a bid without passing the savings from the lower bids back to the Federal Government.
- (3) **CONTRACTOR**- The term 'contractor' means an individual or entity that has been awarded a contract by the Federal Government.
- (4) **SUBCONTRACTOR**- The term 'subcontractor' means an individual or entity with whom a bidder on a contract proposes to enter into a subcontract for manufacturing, supplying, fabricating, installing, or otherwise performing with respect to the contract, whether the work is to be performed by the subcontractor at the construction site or off the site.

### **SEC. 4. PROHIBITION AGAINST BID SHOPPING.**

- (a) **IN GENERAL**- No contractor or subcontractor shall participate in the practice of bid shopping with respect to a contract.
- (b) **NOTICE REQUIREMENT**- Any invitation to bid or request for proposal issued by the Federal Government with respect to a contract shall include a clause explicitly prohibiting the practice of bid shopping and specifying the penalties for violating the prohibition against bid shopping.

### **SEC. 5. PENALTIES.**

(a) IN GENERAL- A contracting officer who becomes aware of a violation of the prohibition described in section 4(a) shall exercise the option of--

(1) canceling the contract; or

(2) imposing liquidated damages, the amount of which shall be 3 times the difference between the subcontractor's final bid before the award of the contract and the ultimate price of the subcontracted work.

(b) GROUNDS FOR SUSPENSION OR DEBARMENT- The imposition of liquidated damages on a contractor with respect to 2 contracts within a 5-year period shall be deemed to be adequate evidence of the commission of an offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor within the meaning of part 9.4 of the Federal Acquisition Regulation (Debarment, Suspension, and Eligibility) (49 CFR 9.4).

#### **SEC. 6. IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.**

The Federal Acquisition Regulation shall be modified to provide appropriate solicitation provisions, contract clauses, and investigatory procedures to implement this Act.

#### **SEC. 7. EFFECTIVE DATE.**

This Act shall apply with respect to contracts awarded on or after the date of the beginning of the first fiscal quarter beginning more than 90 days after the date of the enactment of this Act.

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<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GO TO</i>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

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**Bid Shopping and Bid Peddling:**  
It may be legal. But it's certainly not ethical!

T. J. Ferrantella

In 1995, the Associate General Contractors of America, the American Subcontractors Association, and the Associated Specialty Contractors issued this joint statement on the issue of bid shopping and bid peddling:

*"Bid shopping or bid peddling are abhorrent business practices that threaten the integrity of the competitive bidding system that serves the construction industry and the economy so well.*

*"The bid amount of one competitor should not be divulged to another before the award of the subcontract or order, nor should it be used by the contractor to secure a lower proposal from another bidder on that project (bid shopping). Neither should the subcontractor or supplier request information from the contractor regarding any subbid in order to submit a lower proposal on that project (bid peddling).*

*"The Associated General Contractors of America, the American Subcontractor's Association, and the Associated Specialty Contractors oppose these practices."*

The statement by itself is remarkable since it is rare to find such agreement on any issue within the construction industry. It may be unprecedented to have such a strongly worded, definitive statement prepared jointly by some of the industry's leading voices.

While the joint statement touches on some of the concepts of bid shopping and bid peddling, we can turn to the American Society of Professional Estimators (ASPE) for more succinct definitions of these abhorrent practices.

- *Bid shopping "occurs when, after the award of the contract, a contractor contacts several subcontractors of the same discipline in an effort to reduce the previously quoted price."*
- *Bid peddling "occurs when a sub-bidder approaches a general contractor who has been awarded a project with the intent of voluntarily lowering the original price below the price level established on bid day. This action implies that the subcontractor's original price was either padded or incorrect."*

It is a short-term, transaction based perspective that fosters bid shopping and bid peddling.

- The general contractor's motivation to bid shop is a short-term increase in profit. Through the process

of bid shopping, he may be able to increase the project's profit by pitting one subcontractor's proposal against another's and buying out the subcontractor for less than the amount included in the general contractor's bid to the owner.

- The subcontractor who becomes subject to bid shopping or who engages in bid peddling is able to reduce his cost only if his bid was "padded" with unnecessary costs, if he is willing to accept a reduced profit on this work, or if he plans to deliver less than originally proposed.

Further, bid shopping and bid peddling are unfair business practices since they seek to usurp the business opportunities that ethically should accrue to the sub-bidder who submitted the lowest, responsive price on or before bid day.

The professional practice of construction requires a perspective that is long-term and relationship-based, with a focus on the ideal of client service. Practices such as bid shopping and bid peddling cannot sustain long-term working relationships between contractors and subcontractors and these practices are not in the client's best interest.

#### *The History of Legislation to Curtail Bid Shopping*

Bid shopping and bid peddling are not new problems and a few states prohibit these activities through legislation or administrative procedures on the projects that they fund. Currently, legislation is pending in Congress to curtail these activities on federal construction projects. The history of legislative action or administrative procedures shows the industry wrestling with the issue yet never developing an industry-wide solution.

In 1931, Congress first took a look at the idea of "bid listing" to curtail the practices of bid shopping and bid peddling. Under several proposals made in the 1930's, a general contractor for federal projects would have been required to list his subcontractors on bid day. Any subcontractor substitution would have required approval by the federal contracting officer.

In 1938, both Houses of Congress approved legislation requiring bid listing but it was vetoed by then President Franklin Roosevelt because of a provision that required federal agencies to supervise subcontractor payments. There was a concern that the legislation would create administrative headaches.

During the World War II years, the issue of bid listing or other legislation to curtail bid shopping/peddling was deferred. In the 1950's, the issue received considerable attention from Congress but no legislative action was taken.

In 1963, the General Services Administration (GSA) adopted a policy that required successful contractors to list their subcontractors within 48 hours after the submission of bids for most GSA projects valued in excess of \$150,000. The GSA revised these administrative procedures in 1963 to require bid listings by the time of bid opening. A June 4, 1963 GSA press release explained the action was being taken "as a step to help eliminate the practice of 'bid shopping' by prime contractors for Federal projects".

Also in 1963, the Department of the Interior adopted a similar bid listing policy and in a November 13, 1963 press release then Secretary Udall stated the policy was "designed to promote maximum stability in subcontractor selections, and to eliminate as far as possible the practice of 'bid peddling'. In a very real sense, the policy is advantageous to small business".

The GSA required bid listing until 1983 when it was eliminated on the belief that "bidding problems and protests related to the listing of subcontractors requirement adversely affected the GSA construction program". By eliminating the bid listing requirement, the GSA stated the change would "simplify procurement procedures, reduce paperwork burdens associated with procurement...and eliminate potential delays and financial losses experienced as a result of the listing requirement". (Quotes taken from the testimony of David A. Drabkin, Deputy Associate Administrator, Office of Acquisition Policy, Office of Governmentwide Policy, GSA, in a statement before the Subcommittee on Government Management, Information, and Technology Committee of Government Reform, U. S. House of Representatives, July 13, 2000.)

In 2000, Representative Paul E. Kanjorski (D-PA) sponsored H.R. 4012, the "Construction Quality Assurance Act of 2000", which explained:

"Bid shopping and bid peddling

- a) "threaten the integrity of the competitive bid system for construction that benefits the Federal Government, the construction industry, and the economy of the United States as a whole;
- b) "deprive taxpayers of the benefits of full and open competition among prospective contractors and subcontractors for the performance of Federal construction projects;
- c) "expose Federal construction projects to the dangers of substandard performance, substitution of lower quality materials, and other detrimental cost-cutting practices by an unscrupulous substituted subcontractor, and

- d) "can be effectively deterred in Federal construction by modifying the Federal Acquisition Regulation to require bid listing."

When the issue of bid listing became contentious, Representative Kanjorski sponsored new legislation in 2001 as H.R. 1859, which is now known as the "Construction Quality Assurance Act of 2001". H.R. 1859 does not require bid listing but it gives the contracting officer the authority to take action when bid shopping is detected.

The bill states "a contracting officer who becomes aware of a violation...shall exercise the option of

- 1) "canceling the contract; or
- 2) "imposing liquidated damages, the amount of which shall be three times the difference between the subcontractor's final bid before the award of the contract and the ultimate price of the subcontracted work."

The bill further provides for suspension or debarment of a contractor who is found guilty of bid shopping on any two contracts within a five-year period.

This new bill contains language that summarizes the problems of bid shopping:

- 1) "Certain unfair and undesirable practices, known as bid shopping, have arisen between contractors and subcontractors from time to time in construction work for the Federal Government.
- 2) "Bid shopping threatens the integrity of the competitive bid system, which well serves the construction industry and the economy.
- 3) "Bid shopping deprives taxpayers of the full benefits of fair competition among contractors and subcontractors, and often results in poor quality of material and workmanship to the detriment of the public.
- 4) "*Because when bid shopping occurs the cost savings gained are not passed on to the Federal Government, while the simultaneous reduction in quality and value are passed on, the procurement practices of the Federal Government should be modified to prohibit bid shopping.*" (Emphasis added.)

H.R. 1859 highlights the ethical concerns of bid shopping or bid peddling: The parties who engage in bid shopping and/or bid peddling have every incentive to reduce the

quality of the final project in order to make up the difference between the original bid and the final cost.

Even in those occurrences where the original plans and specifications are not compromised as a result of bid shopping, the sub-bidder who diligently prepared a price that became a part of a general contractor's bid deserves fair, ethical treatment. This does not occur when a bid is shopped or peddled and the work is awarded to another sub-bidder.

#### *The Objection to Bid Listing*

The objection to bid listing may be summarized in a few simple concepts: risk, poor planning, and comparable price.

In a perfect world, construction plans are prepared properly and accurately, buyers of construction services have engaged in adequate planning and budgeting, and they have the funding available to pay for their proposed projects. Further, the plans and specifications are integrated as seamless documents, there is adequate time allowed to bid the project, and the owner's design professional is available during the bid process to provide any clarification or correction to the plans and specs.

Unfortunately, the world of construction is rarely perfect. As a result, the world of construction is risky. And the risk begins at the bidding stage.

Over the past twenty years, construction projects and construction contracts have become increasingly more complicated and risky. More risk is being transferred down the line from owners and designers to general contractors to subcontractors. At the same time, many owners have reduced their in-house engineering and design staffs as both government agencies and private owners alike have downsized.

These developments have had a direct impact on the quality of plans and specifications, which increases the risk that is assumed by the construction industry. As a result, alternative methods of project delivery are increasing, such as design/build where one party assumes full responsibility for the design and construction of a project. Another alternative that is becoming more widespread is Construction Management (CM), where the CM serves as the owner's agent with a fiduciary obligation to the owner.

Today, it's not unusual for a contractor to have one week or less between the time that a request for proposal is sent and the time the proposals are due. Fax machines, email, and CAD drawings transmitted via Internet are all tools that facilitate this kind of fast paced environment. Unfortunately, these advanced tools don't always provide for better planning; they provide for tighter deadlines.

Tight deadlines and poor project planning increase bidding risk. Where once there was time to fully clarify a subcontractor's quotation through discussion and inquiry, today that time may not be available until after the bid date. For this reason, the Pre-Award or Scope Review Meeting between a prime contractor and subcontractor has become a necessary practice. Here, the prime and sub can sit down and discuss the scope of work, clarify the assumptions made by the parties, and make a comparison all with the objective of determining "comparable price".

The American Society of Professional Estimators (ASPE) defines "comparable price" as "the price which accurately reflects to the prime bidder a scope of work comparable to the other sub-bidders in that trade". The ASPE guidelines further state:

- "It is the prime bidder's responsibility to understand the complete scope of work being bid by the sub-bidder and to determine the value of adjustments to a sub-bidder's price which must be made to compare with other prices. In this way, sub-bidder prices are judged 'apples to apples'".
- "When negotiating a contract, it is the sub-bidder's responsibility to provide accurate prices for legitimate scope additions and deletions, where necessary, and not to use such pricing as an opportunity to bid peddle."

If all this were possible before bid day, bid listing could become an industry standard. For now, there is a need for leadership on the issue together with a strong commitment to ethical standards.

#### *The Owner's Role*

Buyers of construction services can have a significant influence on the practice bid shopping/bid peddling. However, among buyers of construction services there may be an acceptance of the idea of bid shopping. In an October 16, 2001 letter to Rep. Kanjorski, a representative of Smithsonian Institution explained a position that, unfortunately, too many owners seem to accept:

*"The bidding process is, at all stages, necessarily competitive..."*

*After award of the contract to the general contractor, it is acceptable for the general contractor to then attempt to negotiate further with its suppliers/subcontractors who had submitted proposals in an attempt to get the best deal on a given subcontract. That contractual relationship is wholly between the general contractor and its suppliers/subcontractors...*

*(We are) never part of the negotiations between the general contractor and subcontractors, thus we have no role in determining the fairness of pricing."*

Owners must also understand that they, too, are victims of bid shopping and bid peddling and take a strong stand against these practices. The federal government, as the nation's largest purchaser of construction services has been under pressure to take a position of leadership on the matter of bid shopping and bid peddling since the 1930's. Unfortunately, up to this point in time, the industry hasn't been able to agree on the method. The answer may lie in the successful passage of H.R. 1859.

#### *The Development of Ethical Standards for Construction*

Strong leadership from buyers of construction services will help reform the unethical practices of bid shopping and bid peddling. However, the solution is a strong commitment to ethical conduct by the professionals who work within the construction industry.

The need for strong ethics in construction as well as the need for other reforms lead to the establishment of the American Institute of Constructors (AIC) in 1973. In 1994, the AIC established its Constructor Certification Commission, which grants the professional credentials of Associate Constructor (AC) and Certified Professional Constructor (CPC). Part of AIC's credentialing process includes a means of disciplining a construction professional who engages in unethical conduct.

Constructor Certification is a growing movement that is finding significant support in university programs that teach construction. Soon, we will have a generation of professional constructors who have been indoctrinated as a part of their formal training with the need for a commitment to ethical conduct.

In the meantime, buyers of construction services must recognize that they may be at risk when contractors engage in bid shopping/bid peddling. Because, as stated so clearly in H.R. 1859, *"when bid shopping occurs the cost savings gained are not passed on to the (project owner), while the simultaneous reduction in quality and value are passed on."*

#### *About the author:*

T. J. Ferrantella, MBA, CPC, is a principal of the Engineered Companies, which are based in Hammond, Indiana and concentrate on the construction of heavy/civil and railroad projects. Mr. Ferrantella is also Chairman of the Constructor Certification Commission of the American Institute of Constructors, which is based in St. Petersburg, Florida. He can be reached via email at [tferr@engineeredco.com](mailto:tferr@engineeredco.com).

SUBMITTED BY:

HENRY T. WILFONG, JR., MBA, CPA  
PRESIDENT, NATIONAL ASSOCIATION OF SMALL DISADVANTAGED BUSINESSES

TO THE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP-UNITED  
STATES SENATE

Roundtable:

"Are Government Purchasing Policies Hurting Small Business?"

Wednesday, June 19, 2002  
9:00 a.m. - 11:00 p.m.  
428A Russell Senate Office Building

MONITORING, ENFORCEMENT OF COMPLIANCE:

While the Laws Congress passes are important, their importance pales and is of little or no value, if they are not implemented by the Administrating Government and complied with by the Agencies and the private sector which serves the government.

The unfortunate reality is that laws regarding contracting with small and firms owned by socially and economically disadvantaged individuals, are poorly monitored and woefully ill-enforced. They are, in short, not paid much attention to.

There needs to be an attitudinal adjustment. We do not believe that laws which relate to making the playing field level for small and disadvantaged businesses are taken as seriously as others. The why, we know not. However, of the is, there is little doubt.

It is not our intent to criticize any particular individuals or group of individuals, for their past errors in judgment. We'll accept that they made honest mistakes about how to clear up an abundance of past discriminatory practices. How long, however, are we to allow folk to scratch their heads, and wonder why "those folks" can't make it, now that those discriminatory practices have been removed? Why can't they be truly competitive, now that the shackles have been taken off?

It's really very simple to some of us. While the overt shackles have been pretty much removed from minorities and women, in most instances the shackles have not been removed from the minds of those who make value decisions about the capability of competing firms, and individuals. The "process", used so long to exclude minorities and women, has been changed little, if at all.

A greater and more stringent Congressional Oversight, would make significant difference, in how laws are implemented, and compliance is enforced. In line with that thinking, you ought strengthen the OSDDBU offices' role throughout the federal government.

FEDERAL PRIME AND SUBCONTRACTING GOALS/WHY THEY'RE SO  
IMPORTANT/WHY THE GOVERNMENT IS FAILING TO MEET THEM:

Much of the failure of the Government to meet the goals are illustrated by what happened with the SDB Seaside letter written by the Chair and Ranking Member of this Committee to the SBA Administrator, a few months ago.

We sincerely thank the Chairman and Ranking Member for their recommending to SBA Administrator Hector Barreto that the SDB Moratorium, set by the prior Administration, be revisited. We agree with the Senators' assessment that a two-year term, which was set seven years ago, ought be lifted, without further ado. We don't know quite how to explain it, but we feel something is wrong when the Government can set up a 2-year term, and have that term go on infinitum. The Moratorium has, in effect, become a prohibition. Something ain't right with that.

We are pleased that you asked, but we regret that you found it necessary to do so. It is our opinion that SBA should have reported to you, their intention to revisit what the prior Administration did, and to determine whether the 7 year-old Moratorium is still legally binding. It is perhaps inevitable that this question will have to be decided by the Courts. We wish that willing minds could agree to do what is right and equitable. This is particularly so, if they, like the SBA, are supposed to be our "Advocates". Goals are important in that they are measuring tools in determining whether the intent of Congress is being met. 8(a) goals, SDB goals, HUBZone goals, and no other kinds of goals, actually are intended to measure "maximum practicable utilization", as desired by Public Law 95-507. We accept the goals, not as an end unto themselves. Rather they are merely the "measurements towards achievement". But, accepting them as the end defeats the whole purpose.

Never forget. The purpose is not to make goals. The purpose of minority business development programs is, to make the playing field level, by promoting the competitive viability of firms owned by socially and economically disadvantaged individuals.

So, rather than concentrating so much on the "statistical figure", we ought concentrate more on the "capability development" achieved by firms. We need to determine if there are firms that were NOT afforded maximum practicable opportunities. HEY, don't tell us that can't be measured. Of course it can. If you don't know how, we know several good CPA firms that are excellent at doing that kind of thing.

In any event, we think that the Administrator was guilty of blindly accepting the "Statistics Achieved", rather than seeking "Maximum Practicable Utilization". What further exacerbates the problem is the possible lack of accuracy of the statistics presented. If things are so good, why does our SDB Community feel so bad?

We think the Administrator erred seriously, in concentrating on the amount reached in determining that SDB set-asides are unnecessary." It is our humble opinion, based upon years of experience in this arena, that the \$9.4 billion purportedly achieved in FY2001 for SDB Federal



procurement, should have been more like \$15 billion, in order to claim achievement of the maximum practicable utilization goal.

We are of the opinion that what the SBA Administrator did is typical of what all too many Government officials, and even Congress Members, do. They accept the "minimum" goal as the ceiling. Thus, they end up establishing quotas. Goals are not meant to be quotas, and we must not allow them to be perceived as such, by practice.

#### IMPROVING THE SBA'S SMALL BUSINESS CONTRACTING PROGRAMS:

One of the major problems in maximizing the participation of small and disadvantaged businesses in the program are based upon the perception, due to experiences, that the SBA is not a "user friendly" Agency. Over and over, our members and others we know, treat going to SBA for help, like going into the lion's den. Perhaps they overreact, and that would be their failing. However, perhaps their trepidations are well-founded. For now, one of the perceptions prevalent in the SDB Community is, there is no place to turn to for help when problems arise. It is our hope that The Ombudsman at SBA will go a long way in solving that problem. It is our firm belief that one of the major failings of SBA in recent years has been its failure to adequately "advocate" the interests of small and disadvantaged businesses in other Government agencies.

The legislation requirement that each Federal agency's OSDDBU shall cooperate with the SDB Ombudsman, will go a long way in motivating the OSDDBU to carry out his or her responsibilities. In addition, it will provide the OSDDBU, with some "CYA" resources that have been absent in recent years. At the same time, nothing in the Act is intended to replace or diminish the role of the OSDDBUs at each Federal agency.

The SDB Ombudsman will help in making the playing field level in both the Federal sector, and in that large private sector which serves the federal government. Part of the Ombudsman's duties will be to "track and report on complaints received from small business firms regarding their treatment by Federal procuring agencies and non-small business prime contractors". This has been greatly needed for a long time.

Finally, the SBA has ill-used, or failed to use valuable tools, that it already has, for making the playing field level. For example, SBA has the 8(a) Mentor-Program, but who's to know. It is a virtual secret, to the outside world. Furthermore, many inside SBA are not aware of its existence, much less its value.

The Mentor-Protege Program, in conjunction with better use of 8(d), could greatly enhance the participation and future not only of 8(a) firms, but also Women-Owned-Businesses, Veteran-Owned-Businesses, HUBZone businesses, and almost anyone else in the portfolio.

Much of it has to do with an attitudinal adjustment....

SBA did not include, in its HUBZone Regulations, the priority- preference for those firms which are both 8(a) and HUBZone. And they issued guidance that states that the priority-preference has no statutory provision to support its creation.

We support Chairman Kerry's previously stated intention to introduce legislation which will rectify the situation by creating a statutory priority-preference for firms that have both an 8(a)BD and a HUBZone certification. We agree with the Chairman that this provision as a win-win for the 8(a)BD and HUBZone contracting communities.

Respectfully submitted

Henry T. Wilfong Jr., MBA, CPA

President, NASDB

Current or Former Positions:

Pasadena, CA City Councilman

California Council on Criminal Justice

Associate Administrator MSB/COD, SBA

Member, National Council on Policy Review

Member, NASA Advisory Council

Chair, NASA Minority Business Resource Advisory Committee

Member, Presidential Task Force on International Private Enterprise

Member, Bush-Cheney Transition Team-SBA Advisory Group

ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS,  
*July 16, 2002.*

Hon. JOHN F. KERRY, *Chairman,*  
*Committee on Small Business and Entrepreneurship,*  
*U.S. Senate*

DEAR MR. CHAIRMAN: I am writing in strong support of the National Small Business Regulatory Assistance Act, S. 2483. As you know, this legislation establishes a pilot program to award competitive grants to 20 selected Small Business Development Centers (SBDCs) to provide regulatory compliance assistance to small businesses. With these grants, the SBDCs would form partnerships with Federal compliance programs, provide education and training, and offer free compliance counseling to small businesses. The legislation also provides privacy protections to small business owners who seek assistance under the pilot program, and also extends privacy guarantees to all small businesses that seek assistance from their local SBDCs.

SBDCs are in a unique position to provide regulatory assistance to small businesses. With more than 1,000 centers across the nation, the SBDC network assists about 600,000 small business owners each year in face-to-face counseling and training, in addition to hundreds of thousands more small businesses that SBDCs assist through the mail, telephone, fax-on-demand and e-mail.

Small business owners try to comply with government regulations. Many small businesses are family-owned and operated. Small business employees are frequently family or friends of the same employer. Small business owners do not want their employees working in unsafe workplaces, and they want their children to grow up in a clean and healthy environment. However, small business owners may not know what is expected of them and how they can comply with regulations in a cost-effective manner.

Legislation similar to S. 2483 was passed by the House of Representatives by voice vote on October 2 of last year, with strong, bi-partisan support from the House Committee on Small Business. S. 2483, which you are cosponsoring, includes changes to the House-passed bill that are supported by the ASBDC. These changes include technical corrections, an improved funding formula to distribute grants more evenly among grant recipients, improved study provisions, and clarification of privacy protections. I sincerely appreciate your openness in working with the ASBDC on these changes, and I want to commend John DaSilva of your staff for his work on this bill.

S. 2483 recognizes the very real need of small- and medium-size employers for regulatory compliance assistance. Thank you for your leadership on this important small business development legislation.

Sincerely,

DON WILSON,  
*President.*

